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INDOCHINESE REFUGEES: COMPREHENSIVE PLAN OF ACTION

Y 4. IN 8/16: IN 2/4

Indochinese Refugees: Comprehensive...

JOINT HEARING

BEFORE THE
SUBCOMMITTEES ON
ASIA AND THE PACIFIC
AND
INTERNATIONAL OPERATIONS AND HUMAN RIGHTS
OF THE
COMMITTEE ON
INTERNATIONAL RELATIONS
HOUSE OF REPRESENTATIVES
ONE HUNDRED FOURTH CONGRESS

FIRST SESSION

JULY 25, 1995

Printed for the use of the Committee on International Relations



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INDOCHINESE REFUGEES: COMPREHENSIVE PLAN OF ACTION

TUESDAY, JULY 25, 1995

HOUSE OF REPRESENTATIVES,
COMMITTEE ON INTERNATIONAL RELATIONS,
SUBCOMMITTEE ON ASIA AND THE PACIFIC, AND
SUBCOMMITTEE ON INTERNATIONAL OPERATIONS AND HUMAN
RIGHTS,
Washington, DC.

The subcommittees met, pursuant to call, at 2 p.m., room 334, Cannon House Office Building, Hon. Christopher H. Smith [chairman of the subcommittee on International Operations and Human Rights] presiding.

Mr. SMITH. The hearing will come to order. I would like to join my colleague who is regrettably in the chair of the House right now, Congressman Doug Bereuter, who is the chairman of the Asia and Pacific Subcommittee, who could not be here, but who will join us as soon as he can get out of the chair. He is presiding over the bill that is on the floor, but he will join us, I am told, as soon as he can get over here.

Ladies and gentlemen, almost 2 months ago, the House voted 266 to 156 for dramatic reforms in the so-called Comprehensive Plan of Action for Southeast Asian Refugees. Although it is somewhat unusual for the House to hold public hearings on a subject on which it has so recently legislated, it is important that we bring together supporters and opponents of that legislation, representatives of the Administration and independent experts, in an effort to seek consensus on a process by which we can end the saga of the Vietnamese boat people and the Hmong refugees with honor and decency.

This joint hearing of the Subcommittee on Asia and the Pacific and the Subcommittee on International Operations and Human Rights will provide a useful overview of the problems with the CPA and perhaps some possible solutions.

On Thursday morning, the Subcommittee on International Operations and Human Rights will take an additional, deeper look at some of these problems and the solutions, hopefully. We will hear from a panel of experts on the history of the implementation of the CPA, from a panel of Vietnamese-Americans and Hmong-Americans who have been victimized by its defects, and then from a final panel on the feasibility of various plans for rescreening.

I should make clear at the outset as the author of the CPA reforms enacted by the House, that supporters of these reforms are not wedded to any particular formula for fixing the CPA. On the

one hand, we remain firm in our belief that the CPA screening process was hopelessly inadequate. We are by no means confident that wrongly screened-out refugees will be safe upon their return to Vietnam or Laos.

Our skepticism about the CPA has been exacerbated by its admirers' attacks on Congress' attempt to protect these people, attacks which have often been cast in the most intemperate and personal terms.

Yet, we are determined—I am determined—not to let that or pride of authorship or anything get in the way of a solution that will save these people. There is only one fundamental principle on which we cannot compromise: the number of genuine political and religious refugees who are forcibly repatriated because of a defective screening process must be zero. This principal commands at least nominal agreement from virtually everyone. The difficulties begin when we try to reach agreement on key terms.

I hope, therefore, that the witnesses today will address two fundamental areas of disagreement. First, just how bad were the problems with the CPA screening? Were just a few genuine refugees inadvertently screened out, or was the process defective enough so that the number is more likely to be in the hundreds or even thousands?

Second, how safe would it be for someone who was a genuine political or religious refugee, but who was erroneously screened out to return to Vietnam or Laos? We hear from the UNHCR that they have monitors in Vietnam and Laos and that neither of these, nor the non-governmental organizations that are present in these countries, have found any persecution of returned asylum seekers.

We will hear today the testimony of one of these monitors. I would like to ask this witness and all the other witnesses, is a returned refugee safe only when he or she keeps a low profile, or are these returnees free to practice Catholicism or Buddhism according to their own consciences, to express their political views and to exercise other internationally recognized human rights?

I look forward to hearing from our witnesses, and I would first like to introduce our first witness representing the Administration, Assistant Secretary of State for Population, Refugees and Migration, Phyllis Oakley. Mrs. Oakley, a 20-year career Foreign Service officer, has led the Department's Refugee Bureau since September 1993. A native of Omaha, Nebraska, Mrs. Oakley is a Phi Beta Kappa from Northwestern University and holds a Master's Degree from the Fletcher School of Law and Diplomacy.

Madame Secretary, welcome to the subcommittees and I look forward to your testimony.

STATEMENT OF HON. PHYLLIS E. OAKLEY, ASSISTANT SECRETARY OF STATE FOR POPULATION, REFUGEES AND MIGRATION, U.S. DEPARTMENT OF STATE

Mrs. OAKLEY. Thank you very much. Before I begin, may I introduce Mr. Allan Jury, who is sitting with me here. His technical expertise coming from Bangkok as well as Geneva, I think, perhaps, during the questioning, might be useful.

Let me say first of all, Mr. Smith, I welcome this opportunity to be here this afternoon to discuss the Comprehensive Plan of Action

for Indochinese Refugees, the CPA, and I look forward to your questions.

Since it has been the object of some attention and criticism in recent weeks, if you will permit me, I would like to review how the CPA came about and what has happened over the last 6 years. As you will recall, in the late 1980's, large numbers of boat people continued to leave Vietnam and land on the beaches of first-asylum countries in Southeast Asia and Hong Kong. That is, the lucky ones arrived on the beaches.

We know that thousands of others suffered indescribably at the hands of pirates and drowned and starved en route. The flow of people was such that some first-asylum countries were stopping the boat people from landing, leading to further tragedies. It was in this situation that the international community agreed that something had to be done to save lives and stem the flow of people from Vietnam. That something was the CPA.

First-asylum countries of Thailand, Malaysia, Indonesia, the Philippines and Hong Kong agreed to allow the boat people to land, and in return, the international community agreed to the institution of a screening process to try to determine who were true refugees fleeing persecution and who were not.

Another aspect of the CPA which we often forget was the great expansion of the Orderly Departure Program (ODP), from Vietnam, which provided a safe alternative to flight by sea to those who were eligible for refugee status or some other forum of legal immigration.

Pursuant to the CPA, the United States negotiated a bilateral agreement with Vietnam to provide for the safe immigration from Vietnam through ODP of the tens of thousands of Vietnamese who had been released from re-education camps, in addition to Amerasian and family reunion cases.

Since its inception, more than 400,000 Vietnamese have been resettled in the United States under the ODP. Most first-asylum countries that were parties to the CPA sustained their commitments to permit boat people to land. Since the beginning of screening, more than 120,000 Vietnamese have been screened, of whom 33,000 have been found to be true refugees and resettled.

The United States alone has resettled almost 13,000 of this number. During the same period, about 72,000 people have returned voluntarily to Vietnam. Resettlement in the United States is the end of a process for each asylum seeker who must first be screened by the first-asylum screening team and then pass an individual interview with an officer of the U.S. Immigration and Naturalization Service as required by U.S. law.

The combination of the ODP from Vietnam, the screening process and first-asylum countries has led to the virtual end of the flight by sea. Thousands of people are alive today because of the CPA. Tens of thousands of others are now resettled in the United States and other countries. The screening process has been completed. Approximately 40,000 Vietnamese remain in first-asylum camps, more than half of them in Hong Kong. Most of them have been found ineligible for refugee status and under the terms of the CPA, must return to Vietnam.

Has the screening process been perfect? No. Has it generally been fair and in accordance with international standards? Yes, we believe it has been. What is the fate awaiting those who return? The experience of the 72,000 who have already returned indicates that refugees will not be persecuted, but they will face the same challenges, changes and difficulties faced by their millions of other fellow citizens.

Who has done the screening? Under CPA, screening is first and foremost the responsibility of the first-asylum countries. This fact should not be forgotten as we discuss the screening process. UNHCR has the responsibility to advise and assist and to try to establish as much as possible uniform screening criteria. The Government of Vietnam made a commitment to the international community that under the CPA, there would be no reprisals against the returnees. For 6 years, we believe it has kept that commitment.

Those who returned are monitored by seven Vietnamese-speaking expatriate employees of UNHCR who visit the returnees throughout the country. They are monitored by others, such as the British Embassy. They receive \$290 to help them start their lives again. The United States has provided over the last 3 years more than \$8 million of assistance to refugees through four U.S. non-governmental organizations. Those NGO's have American staff dealing with and visiting returnees all over Vietnam. All of these present and probing eyes have not detected any pattern or practice of persecution of those who have returned.

At a time when Vietnam is becoming a full member of ASEAN, when it is aggressively seeking foreign investment, and when it is preparing to begin a new and positive relationship with the United States in the wake of the recent establishment of full diplomatic relations, we firmly believe that Vietnam has a compelling interest in keeping its word on the treatment of returnees.

The CPA, then, in our view, has been a success in many ways, in saving lives and in serving as a model of international humanitarian cooperation. The Sixth CPA Steering Committee in March this year agreed that the end of 1995 would be a target for completion of work under the CPA in first-asylum countries.

Rapidly declining voluntary repatriation rates, which may in part be due to hopes of direct U.S. resettlement from the camps as suggested in CPA-related provisions of the House Foreign Affairs Authorization Bill, have made it increasingly unlikely that this target can be achieved.

Voluntary repatriation of the screened-out always has been the goal of CPA. Now, hundreds of people who had signed up to return voluntarily to Vietnam have withdrawn their applications and new voluntary repatriation registrations have virtually ended. We are deeply concerned about unrealistic expectations of direct resettlement from first-asylum camps for those who have been deemed not to be refugees.

We believe that such expectations threaten to condemn those in the camps to a further period of limbo and suffering and lives that have already been put on hold for too long.

The expectations are unrealistic, we believe, because the first-asylum countries have said they are committed to the implementation of the CPA and will not allow a rescreening in the camps.

From their perspective, the CPA has been the answer to a major humanitarian and political challenge.

The expectations are also unrealistic, because in the best of circumstances, only a limited number of those in the camps likely would be encompassed within the CPA legislation that is part of the House bill.

Finally, we are concerned about the effect upon Vietnamese and Vietnam of direct resettlement to first-asylum countries of those deemed not to be refugees. Just as refugee screening and return of non-refugees has resulted in great reductions in boat flows, the abandonment of this principle could conceivably invite a new and dangerous exodus.

Given all this, where do we go from here? First of all, I believe all of us, those who support the proposed legislation and those who opposed it, want to do what is best for those in the camps. We respect the interest in the humanitarian commitments of the chairpersons and ranking minority members of both these subcommittees, and your views have certainly informed our deliberations. Like you, we want to end the CPA in the most humane and fairest way possible, and we always have. We do not put a deadline on the pursuit of fairness and justice. The CPA still permits review of cases where additional information may indicate that an initial screening decision was wrong, and I think that that is a very important point to keep in mind.

The UNHCR has looked into allegations that corruption and impropriety might have been involved in a small number of screening decisions, and we understand the results of this review have been given to the committees. I think you do have that information.

The United States is firmly committed to the integrity of the CPA and to the principle that there can be no resettlement of non-refugees directly from first-asylum camps. Our policy has been and continues to be clear. Those who have been deemed not to be refugees pursuant to CPA procedures, should return home to Vietnam.

At the same time, we are prepared to address concerns about those in the camps who, while they are not deemed to be refugees, might nonetheless be of special humanitarian interest to the United States. As we consider this issue, we are also eager to find creative means to encourage further the voluntary return process.

For each of these reasons, we are discussing with our CPA partners and we would be prepared to support a proposal to provide opportunities for resettlement interviews upon return to those now in the camps who agree to return to their homes voluntarily. The exact details would be determined in part as a result of consultations with those governments whose cooperation would be required and essential for its successful implementation.

But, let me stress again that any such program would have to be consistent with CPA principles and would thus require that the applicant first return home. We plan to do all we can with the support of our international partners to bring the CPA to a just conclusion. We believe the best way to do this is to support the unanimous agreement of the Sixth CPA Steering Committee to move forward in support of voluntary repatriation as the preferred method of return. It is only with this clear message that we can hope to

end the confusion and uncertainty in the camps and allow people to act on self interest rather than false hope.

Let me say one brief word about the Hmong, the other group of people covered under the CPA for whom we have an equally important responsibility. While the Hmong are part of the CPA, there is a distinct difference. The Hmong now in Thailand are in the main people who are recognized as refugees. The United States has admitted some 126,000 Hmong and other Lao Highlanders to the United States since 1975. There remain approximately 7,000 Hmong refugees in camps in Thailand and the United States is prepared to accept for resettlement as many as are eligible under our law.

The complicating factor is that many originally indicated to Thai authorities that they wished to return to Laos and this decision was considered firm at the time. In view of the end of 1995 target date for ending the CPA, we are involved in the ongoing discussions with the Royal Thai Government about the possibility of allowing Hmong refugees access one last time to resettlement in the United States.

While the timing of such access, which we support, remains the prerogative of the Thai Government and the current Thai policy of promoting voluntary repatriation is consistent with international refugee standards and principles, we expect the issue will remain the subject of our constructive dialog with the Thais on refugee issues. And, we will be actively involved in that dialog with the Thai Government.

In conclusion, let me just say that we fully support the CPA for both the Vietnamese and the Hmong. We believe that the CPA has accomplished a great deal that is good. It has been a humane and effective channel through which the United States and the international community, with the vital assistance of the UNHCR, has thought to resolve the final tragic legacies of the Indochinese War. Thank you.

[The prepared statement of Mrs. Oakley appears in the appendix.]

Mr. SMITH. Madame Secretary, thank you for your testimony. I would like to ask Howard Berman, the ranking member on the Asia and Pacific Affairs Subcommittee if he would like to make any opening comments?

Mr. BERMAN. I normally would just pass and insert in the record, but this is an important issue and in what is now a non-opening statement, I wanted to throw out a couple of points, and I can follow up with questioning.

First of all, I think it is very important that you called this hearing and I commend you for doing it, and for staying with the issue. During the State Department Authorization Bill, I supported the chairman's amendment and I did so in the belief that pressure was needed to be maintained in order to achieve a workable and a fair resolution of the cases of Indochinese refugees who are remaining in the camps.

Stripping away for a second the formalities of my statement, it seems to me that one can accept that the CPA has done tremendous good for tremendous lives, and still, I am concerned because people whom I have great respect for tell me there have been prob-

lems in the initial screening process. There have been screeners who do not have the sensitivity to the different issues that could give someone a well founded fear of persecution in doing some of the screening.

It is not to say that every screening was bad, but it is to say that this is a problem. If either the screening was bad, or in fact, people who are being sent back are being mistreated or abused because of their refugee status or because of their previous political activities, that would be wrong. I have no evidence of the latter, although I think the chairman may have some points on that.

But, I do believe from the people that I have spoken with, that there have been defects in the re-screening process. That is why I was very happy that the Administration is considering what I think what has been called by the refugee organizations who presented it to me a reasonable solution to this very difficult dilemma, which is this Track II proposal, which proposes to return refugees to Vietnam for INS interviewing. People who know how to do these interviews and will understand what is at stake and what to ask for.

Given the imminent demise of the Comprehensive Plan of Action and the lack of support among first-asylum countries for maintaining these camps, and you have spoken to that in your testimony, Mrs. Oakley, I think it is important to consider such an alternative. You have indicated your openness to doing it. I think the NGO's are to be commended for their efforts in developing this.

It is clear, though, if Track II is going to be adopted and work, more effective monitoring systems would be needed for those refugees returned, and we would need the full support of the Vietnamese Government.

In addition, the Administration, I think, would need to liberalize its categories of presumptive eligibility, and we might need some supplementary funding and also to develop incentives for the refugees to return for the reinterviewing process, or else we will not resolve the problems that now exist with people canceling their commitments to return and not signing up for future return.

Add all this to the fact that each day that passes, the political atmosphere in this country seems to grow more in favor of restrictive immigration policies. I think both for what is happening abroad and for the sake of these people and given the political climate, the faster we move on this, the better. With that, I thank you for giving me this chance.

Mr. SMITH. Thank you.

Mr. Funderburk.

Mr. FUNDERBURK. Nothing.

Mr. SMITH. Mr. Moran.

Mr. MORAN. Thank you, Mr. Chairman. I do not want to say much now, but I do have some questions. I do think that the Administration is doing a very good job and I think that the fact that they have chosen you, Mrs. Oakley, to take responsibility for this effort is a reflection of the high priority that they give it.

I have a lot of Vietnamese refugees in my district, and I get very conflicting reports. The majority of Vietnamese refugees have the sense that things have really not changed, particularly in terms of the attitude of Vietnamese leaders. But, yet, those who have gone

over to Vietnam have come back with a perspective that conflicts greatly with the assumptions that we have made, and they would lead you to believe that things are happening much faster in Vietnam than our attitudes are adjusting to that pace of change. In fact, change is occurring throughout Southeast Asia, much of it driven economically, but generally, economic change does cause change in terms of public policy.

I heard, for example, of a discussion with the former head of intelligence for the South Vietnamese Army, and this guy is a consultant now to the government, and living in a palatial place in Vietnam. You would think of all people, this guy would have been put away in some dark dungeon, but yet just the reverse is true.

So, I would like to see the extent to which your information coincides with much of the information that Mr. Smith has gotten of people who, in fact, have been persecuted. Because, if there are certain cases, if there is a pattern, then we need to know about it, and obviously, that is going to direct our immigration policy.

But, if in fact, there are only isolated examples that this is not a practice or a pattern, then even with those who would normally be considered political refugees, it may be a different place, and I do think that particularly the middle class, might be a lot better off in Vietnam under different circumstances.

So, the question in my mind is the pace of change in terms of the South Vietnamese Government and the acceptance of some tolerance of difference of opinion. That is what I want to hear from you and perhaps even third hand what you have heard.

So, Mr. Smith, as Mr. Berman said, we are glad that you are having the hearing. It gives us an opportunity to get some information that is going to be important in reaching our conclusions on this issue.

Mr. SMITH. Thank you, Mr. Moran.

Secretary Oakley, I have a few questions to begin the questioning. I knew my colleagues will have some, as well. On the interviewing process, I think you are aware of the Lawyers' Committee for Human Rights' very scathing report, in which they said that the interviews were hostile, and they looked at decisions that were being made in Hong Kong, in particular.

They said, and I quote, "The Lawyers' Committee finds that the procedures in Hong Kong are flawed in several basic respects and that hundreds, perhaps thousands, of Vietnamese refugees have been wrongly rejected," and they go through a whole series of cases that they had studied. I have read this half a dozen times now, and every time I read it, it concerns me that people have been sent back.

But, their conclusion is the entire screening and review procedures remain seriously flawed. Yet, it is your testimony, and I heard you say it is not perfect—nothing in this world is perfect—but, certainly we are just looking for basic fundamental fairness. In talking to refugee groups as I have done over the last 6 months upon assuming this chairmanship and before that, as a very interested member of the Foreign Affairs Committee, I would continually hear about this hostility on the part of the interviewer, vis-a-vis the interviewee. You know, an "I, thou", Martin Buber type

of relationship of condescension pervades the process, according to many who seriously have looked at this.

I am not looking for perfection, but I am looking for fairness. Would it be your testimony that the screening process has been fair, and how do you respond to the Lawyers' Committee, for example?

Mrs. OAKLEY. Let me go back to something that I had included in my testimony, if I might. There has not been one screening process done by one organization, and I think it really is important to keep in mind that each first-asylum country was responsible for its own screening process.

So, Indonesia had its own process, as did the Philippines, Malaysia, and Hong Kong, under the British administration. So, you had various screening processes, all with the advice and working with UNHCR to try and make the standards uniform and to try to establish some sort of standard, so it would be as equivalent and fair as it could be.

So, I have been a little put off by these general statements about the screening process, because I think that we really have to get more specific in where was the screening process, and in what countries does most of the criticism focus? As I have looked into it and discovered, most of the criticism has focused on the screening process in Indonesia. I must say that many of these charges were only brought recently to light.

I was in Geneva last week. I met with UNHCR officials about that. There had always been some general criticisms, but in response to these criticisms, the UNHCR is smarting and taken aback. They have instigated their own investigation into these charges of improprieties.

Now, again, let me say in general, the United States was not involved in the screening process. We certainly were interested observers, shall we say, but it was not our process.

In regard to what has happened in Indonesia, they have turned up some improprieties, they are looking generally at it. There is one person on their staff that I think is under more serious investigation than anyone else. They are working with the Indonesian Government to look at those problems, so they are attacking those problems.

As you say, it is a question, were people wrongfully screened in, or were people wrongfully screened out? I do not think anybody wants to look at the question of whether people might have been wrongfully screened in. I think that is one issue that people will properly let lie.

But, I think on those that were screened out, and there are questions now, the UNHCR is investigating, and I have confidence in them that they are going to get to the bottom of that, and that some sort of system will be put in place to look at those cases again. As we have said, when new evidence is prepared, people are always willing to look at it. So, again, I think that those charges are going to be addressed.

In regard to the question of Hong Kong and the question of attitude, I think that is something that is very difficult for me to comment on. I have not participated in any of those interviews. I think

that we all feel in situations like that, sometimes people are sympathetic and sometimes they are not.

The problem, I think, as you recognized in Hong Kong, is there were many people who were simply ineligible and many people who were passionately unhappy about the situation, but we continue to work with the authorities in Hong Kong to look at these cases and see if there can be a possible review of them. And, I will stick by our general proposition that we think, in general, the process was pretty good. It was not perfect. There was an appeal process. We have worked with the NGO's to introduce some other cases on Track II to UNHCR. Let me say that this is a process that is alive, and it is not over, and that we are looking at all these cases.

Mr. SMITH. Just to follow up briefly, it was precisely a number of specific cases that caught my attention, particularly in the Lawyers' Committee report. They point out an examination of 132 decisions of the review board, rendered in 1990-1991, shows that this process remains hostile to genuine refugees—and you did mention Hong Kong. I think you mentioned Indonesia.

In all of these cases, refugee status was denied. So, there have been very responsible people in the refugee community, and those who represent human rights organizations that have come forward and said the process has been very seriously flawed. No concerns about perfection, but concerns about specific cases. I have looked at a lot of the specific cases myself, and I did not sit in on those interviews, either.

But, it seems to me that when you get so many people who are there on the ground who have looked at this, that it is a problem, and there seems to be a pattern, it begs the question as to why re-screening, preferably in-country, would not be the order of the day. Just so that we do not make a very serious blunder, and send people back to a very—with all due respect to my good friend from Virginia, the Country Reports on Human Rights Practices for Vietnam paint an extremely, exceedingly bleak picture of the human rights situation in Vietnam.

Yes, they are earnestly seeking credits and trade and contact with Coca-Cola, but when it comes to their treatment, or should I say mistreatment of their own populace, who happen to disagree with the ideology of the ruling leaders, there is no tolerance whatsoever. That goes for religious as well as political dissidents. That is the Country Reports for this year, for the 1994 calendar year.

They also point out in the Lawyers' Committee, settled international standards were ignored. I feel that we have been party, however unwittingly, but party to an unseemly process that has screened out very real refugees. I am encouraged that you, in your testimony, talk about perhaps providing resettlement interviews, but it does beg the question in that regard, why not in the country itself, rather than going back to Vietnam? We all know that the plane load of people who were sent back to Vietnam did not want to get off the plane.

I think if I were in their shoes and I exited a plane and went to a screening, I would say, holy hell awaits me if I do not get screened in. It is almost an act of defiance to walk to the screener, it would seem to me. We know this from the POW issue and it is interesting and I think entirely apropos that we meet in the Veter-

ans' Hearing Room today, because this is part of the legacy of the Vietnam War, those old soldiers that fought side by side with our men in Vietnam, who could be sent back.

We have specifics, and the reason why we had that closed briefing, which I thought was very, very candid and a good dialog, was to begin to show that responsible voices who cared deeply about these refugees and about these people and their fate are saying, red flag. There is a problem here, and the screening process is at the core of it.

If somebody is screened out and it was a legitimate process, I have no argument. But not so if the process has been flawed and tainted, which I believe this one has been in many of these countries, perhaps all of them, but in many of these interviews. Based on a preponderance of evidence, a reasonable man or woman could say, we have to do the rescreening to ensure that justice is done, it seems to me.

I will ask one more question. I have several, but then I will yield to my colleagues for any questions they may have. On the issue of the repatriation monitors, we have gotten a tremendous amount of information suggesting that only a very small percentage, something about 20 percent (and correct me if you believe that is not accurate) of those who have been repatriated, have actually been monitored personally with a visit.

If you could for the subcommittees, describe what that process actually entails? I again often use a reasonable man's standard. I never forget those who trotted off to Hanoi and asked our POW's whether or not there was torture. I do not think too many people would say yes, knowing that they are going back to a cage at the end of the day to their tormentors.

We have reliable information that, in addition to one of those seven monitors there is also, and if you can enlighten the committee on this, someone from the Vietnamese Government who is in the employ perhaps of the UNHCR, but I do not think it takes a rocket scientist to at least suggest, and it is reasonable, I think, that that person reports back to the Vietnamese Government.

If I complain and say I am being harassed, ostracized, mistreated in some way, it is going to get back to the powers that be. The repatriation monitor does not have any power to extricate that person and say, oh, they have been mistreated, now I am going to take them out. So, there is no remedy if you complain of mistreatment. There is only the possibility of retaliation.

Mrs. OAKLEY. Again, I will go back to some earlier statements that we have made and that we stand by, that we have not found a pattern or policy of persecution for returnees in Vietnam. We stand by that statement.

Now, that does not mean to say that there have not been somewhere in the country questions of harassment. That even does happen occasionally by certain officials of the Government in the United States. We are talking about policies of targeting returned Vietnamese and that they are singled out for harassment and persecution. We do not think that there is that sort of pattern of persecution.

UNHCR, as I said, has seven monitors. There are American NGO's that have been working there. The British Government,

other governments who have established embassies a long time ago have people there. We have our own monitoring units and the conclusion of all these people who have reported to us, and their factual reports state that returnees are not persecuted and are settling in rather well.

UNHCR and its international staff, these are expatriates who are there, most of whom are Vietnamese-speaking. We have these four NGO's, people who have been able to travel. The conclusion of our people is that the degree and intensity of monitoring of the Vietnamese returnee population is unprecedented in our memory of all other refugees returned in various other situations, and we have not found a pattern of persecution or harassment.

Now, there were three cases that were brought up in various meetings that we have heard about. In regard to, and you will excuse my pronunciation if I miss one of these names, there was a case of Mr. Vong Nhi, who is a member of the Nung minority. There were charges that he was harassed. We understand that he is living at home, he is free to move about. He had, in fact, reportedly gone to the UNHCR office in Ho Chi Minh City, seeking help in getting employment.

We have had reports that he has been visited by so many NGO and human rights organizations that he has asked if he might be left alone, that he has received so many visits that he is worried that it is going to call undue attention to his situation.

There was another report about Mr. Nguyen Van Kha and that he had been arrested after return. Our latest information from UNHCR says that he was indeed arrested, charged and convicted on charges of robbery and murder. He had a sentence of death that was commuted to life imprisonment.

In one other case, the International Supreme Master Ching Hai Meditation Association of Glendale, Arizona brought to our attention two letters from repatriated Vietnamese, claiming difficulties in carrying out their religious practices. UNHCR is in the process of looking into these cases to see if this is true, but so far, we do not have a reply.

Now, those are the three cases that I have and that is the information that has come to me about them.

Mr. SMITH. If I could, again, in brief followup, is it accurate or inaccurate that only 20 percent have been visited, thereby leaving approximately 80 percent that have not been visited?

Mrs. OAKLEY. I do not have figures on what percentage of those who have returned of the 72,000 or what percentage of Americans who now go back to visit in Vietnam or from other countries, but I will certainly look into that and see if we have any statistics on that, and I will be happy to provide that.

[The information follows:]

UNHCR has issued a report on its monitoring programs, which has been provided to the subcommittee. UNHCR reports that a recent evaluation of the monitoring program concludes that UNHCR's monitoring efforts in Vietnam are by far the most complex, far-reaching and systematic case followup of any repatriation operation to date. Using seven expatriate staff, all of whom are fluent in one or more of the local languages, some 18,000 individuals, or 25 percent of all returnees, have been either visited by, or have had direct contact with, UNHCR expatriate monitors. UNHCR considers the current cumulative monitoring coverage of 25 percent of the total returnee population to be a representative indication of the proper treatment of returnees. Furthermore, the general well being of returnees has been further inde-

pendently confirmed through the presence of international governmental and non-governmental agencies implementing extensive reintegration assistance projects for returnees. UNHCR estimates that if one considers the monitoring role of foreign missions, NGO's, and others, the coverage of the returnee population in terms of monitoring reaches some 40 percent. All of the provinces where returnees are located have been visited by expatriate UNHCR monitors.

Though the process of building a new life in Vietnam may be difficult, all observations to date by UNHCR, American NGO's, other expatriate observers, and our own monitoring visits have concluded that returnees have not experienced systematic harassment or persecution since their return.

It should be noted that the degree and intensity of monitoring of the Vietnamese returnee populations is unprecedented.

Mr. SMITH. Does anyone on your staff have information as to whether or not that is accurate or inaccurate?

Mrs. OAKLEY. Roughly accurate.

Mr. SMITH. So, the ones that keep getting revisited, presumably, that is not by monitors but by NGO's and all, I mean, that sounds nice and good and adds a light note to this hearing, but 80 percent have not been visited. I do have questions remaining about how people are selected to be visited. What kind of contact, what does the interface look like? Is there somebody from the Government of Vietnam there in the interview? Is it a privileged situation, like an attorney-client relationship, doctor-patient relationship, or is the possibility—again, when that person shows up, how does the returnee have a sense that this is truly somebody from the UNHCR? He or she is out in the countryside somewhere. Somebody shows up, shows some credentials, presumably. Why should they believe it?

They already feel, if they are truly a refugee, they have been wronged once. This could be a trick. I mean, there are mutually reinforcing reasons why even for that 20 percent, mum is the word, because things could only get bad or worse for your kids or for your relatives, if you begin to delineate some real problems.

Mrs. OAKLEY. Let me say that I do not have statistics on how many visits are made. I think that the visiting, as I understand it, is done as a combination of planned visits to various sites and movement around the country, as well as random visits and drop-ins and things like this. It is the usual kind of patterns that professional monitors develop, to get a feel about the subject.

These, again, are experienced UNHCR people who have had experience in other countries in looking at this, and anybody who is a professional gets to be good at it.

So, I think that we have to accept that there has been more monitoring in Vietnam and over enough period of time and again, with as many visitors going back and forth and as much communication as now exists between Vietnam, the United States and other countries, that if there were large patterns of persecution or cases, I feel confident that we would have heard about it, and we would have been able to follow up.

I think the absence of detailed cases of where this persecution has taken place, the fact that people have been able to go to the UNHCR offices and other NGO offices supports the argument that the monitoring has really been quite adequate.

Of course, we would like to do more. We would like to do more in every country, but I feel reasonably confident that the monitor-

ing has been effective, and if there had been gross violations of the human rights of these returnees, we would have heard about it.

Mr. SMITH. Is it your testimony that the person who accompanies the monitor reports or does not report to the Government of—

Mrs. OAKLEY. Let me take that question. With some of the cases, there is someone. I would assume that in many visits, particularly of NGO's who are working out in the field on reintegration projects, that there are not government officials with them. And, I am not sure we can give you a precise figure, but we will be glad to look at that and provide the best estimation that we have of that situation.

[The information follows:]

UNHCR has been monitoring Vietnamese returnees since voluntary repatriation began in March 1989. UNHCR monitoring officers are international staff members who speak Vietnamese and are thoroughly familiar with Vietnam. Currently, there are seven full-time UNHCR expatriate monitors, four based in the north and three in the south. UNHCR's national staff are all directly recruited and employed by UNHCR with contracts issued by UNHCR Geneva.

The agenda and location for each monitoring mission is set by UNHCR. Only the general dates and province are announced to Vietnamese Government authorities. UNHCR monitoring officers independently choose which returnees to visit.

In the provinces, UNHCR works with the Labor and Social Welfare Departments (DOLISA). These departments also organize and administer the local distribution of UNHCR's individual financial assistance, and support the planning and implementation of UNHCR micro-projects. On many but not all monitoring visits, UNHCR staff may be accompanied by DOLISA officials.

Mr. SMITH. Again, just so the record is clear, because it was oft stated during the debate, 80 percent of the people, approximately, it is fair to say, have not been visited?

Mrs. OAKLEY. Have not—

Mr. SMITH. Have not been visited by a repatriation monitor?

Mrs. OAKLEY. I think that is roughly accurate.

Mr. SMITH. Mr. Berman.

Mr. BERMAN. We have a difficult problem here. Just my familiarity with the asylum process in the United States is that there are a lot of people who under any liberal or constrained interpretation of the term refugee are not, but seek to use that process to delay their deportation, to, perhaps out of misunderstandings and perhaps with a sophisticated intention to manipulate the system.

At the same time, in our effort to try and cut down on the abuse of the process, we have to be very careful not to be deporting people who are true refugees, because a far worse fate awaits them.

The chairman indicated he would prefer a rescreening in-country. I assume he meant in the country of first asylum. The problem, of course, is will the countries of first asylum permit that, and I think those of us who supported the Smith approach have to address that issue. How are we ending up both for the people who still remain in the camps and in the future for countries that may want to take this role, because heaven knows, we still are going to have problems like this in the future? Are we going to undermine our own credibility in getting countries to accept that kind of a role?

This is a very tricky kind of a process and the suggestion of Track II comes from refugee organizations that care very much about the fate of refugees. I guess when they make this proposal, they acknowledge that there is a problem in the countries of first asylum, which we have to consider. I am not sure just how we bal-

ance all this out, and how do we protect those people so they are not being sucked into the trap or returning home, even though they have the status of classic refugees.

Then, of course, Mr. Moran asks a very fair question on the side. He says, if no one is being harassed in Vietnam by virtue of having fled, because of the fact that they fled Vietnam, then the mistake in giving them refugee status becomes less relevant, because they are not being harassed in that position.

But, we hear some stories that would indicate that may not be that, at least the absolute situation.

Mrs. OAKLEY. If I may, I would just like to say that I think you have put your finger on a real problem in this whole thing. When you look at one group in this process, you hope that what you do for them does not lead to unintended consequences that are negative for the other group. And, I like to think that I care about refugees, too, and I like to think that we are trying to balance all these factors into a whole that works. A whole that works not just for the people who are there in those countries of first asylum, but for those people who have returned to Vietnam, as well as Vietnamese who perhaps did not leave under those procedures, but have an equal place.

I think also for the families in the United States, and what hopes they have about working with their families. I think we also have to think about broader pictures of equity, international cooperation and forge something that factors in all those elements, without forgetting the individual and each individual case. That is why we have concluded that we believe the wisest policy is to support the end of the CPA, to work for voluntary repatriation as strongly as possible, so that people will go back to Vietnam assured that in cases where there is a justifiable claim, that they will have a hearing. And, I think that that is what we are going to try and work on.

You are right that there are lots of players involved. It involves lots of discussion. People all think, perhaps, that their one way or their one focus is right. We have to balance all these things together. I think we can do it. I think building upon the success of the CPA and close working relationships with all these governments and growing relations with Vietnam, that we can forge something that is going to meet all these needs and above all, the needs of the people who strongly believe that they were unjustly screened out.

Mr. BERMAN. The one thing I would add to that very complicated equation is to the extent the initial screening process was defective, the people who went through it and got classified so that they would have to return, I think part of it is to give them another shot at a fair interview somewhere.

Mrs. OAKLEY. Yes.

Mr. BERMAN. Thank you, Mr. Chairman.

Mr. SMITH. Mr. Rohrabacher.

Mr. ROHRABACHER. I have had two experiences that sort of pull me in different directions on this whole issue. No. 1, I went to refugee camps in Thailand to check up on a specific individual, a teenage girl who had been a boat person and was captured by pirates and had a horrible situation, and then she ended up in this refugee

camp. A family in Orange County wanted to basically adopt her and was having trouble getting her over.

I was dismayed when I went to the camp to find she was there and, in fact, she had been there for a long period of time, but that she was free to go to France, but she was there in the camp because she did not want to go to France, she wanted to go to the United States. That sort of took the wind out of my sails, because I had been ready to be the champion and the hero of this person who was isolated and alone and desperate and instead, it was just someone who really would prefer to be in that camp rather than go to live with her uncle in France.

On the other hand, I received letters like this, and I would like to submit this letter and this information for the record, that is from a constituent, and I represent a good number of Vietnamese Americans, very proud that they have struggled for freedom and we lost that battle and they are now fine citizens of the United States of America. The issue we are discussing, of course, really plays home with them.

But, here is a man, Mr. Son Do, and I imagine you hear a lot about different cases, but his father-in-law, who worked for the U.S. Government as an intelligence officer, is in a camp in Malaysia. Apparently last year he went to Malaysia and was contacted by a guard at the camp who was representing someone at the camp who asked for \$8,000 in exchange for a positive screening decision.

I will just say that all the names in this allegation are here. There is an affidavit that has been signed by Mr. Sun Do about the whole thing, with the names included, and a brief background on his father, who obviously is someone who should have been screened in.

My question to you is, which incident should I pay more attention to? I have two incidents here. This clearly appears to me to be a sincere human who is reaching out to his father-in-law who was associated for the United States and should be in, and now he is asked to pay a big bribe. By the way, he paid \$2,000 according to this report, could not afford anymore, and then they did not come through with it because he had not paid the whole \$8,000. Then, they came back and asked for \$6,000 more.

What is the situation here? Which incident should the public say is more exemplary of what the situation is?

[The letter and information appear in the appendix.]

Mrs. OAKLEY. I could not make a Solomate decision on which is more important. I think we have to look at both of them. In regard to the first one, there is no doubt in anybody's mind that the United States remains the refuge of choice. As you know, Canada, Australia, and France have taken numbers of refugees, and I think again, these people have settled in and have made productive, beneficial lives for themselves.

But, for most of the Vietnamese and frankly for most of the refugees in the world, they do want to come to the United States, because they feel that they have a better chance here. With hard work and opportunity, they believe they will be able to create the kind of lives they want.

Mr. ROHRABACHER. Just like our forefathers and foremothers?

Mrs. OAKLEY. Sure, absolutely. This is very flattering. We face it all the time, of people who have been offered refugee status in one country but they really would rather come to the United States.

Mr. ROHRABACHER. Right, and we cannot take in the world.

Mr. SMITH. Would my friend yield on that point?

Mr. ROHRABACHER. Yes.

Mr. SMITH. But, is this an exception? I mean, would you say that 90 percent-plus, if they could go to France, Australia or some other country, Great Britain, would go, but those countries have not opened up their doors?

Mrs. OAKLEY. Well, they have, just not as wide as ours. The point is, I think it would depend upon this girl's view of her chances of getting to the United States. If she had no relatives here—

Mr. ROHRABACHER. Frankly, after spending a great deal of time trying to help this one individual, and I thought I was going to be the saint and go to help somebody, I just came to the conclusion that her family was using her, and willing to put her in harm's way of being kidnapped by pirates, in order to get the whole family to the United States.

On the other hand, clearly, how frequent are these cases, where someone's family is being extorted? I mean, this is pure extortion. This is someone being asked for money in order to get an approval that will be recognized by the U.S. Government.

Mrs. OAKLEY. I cannot say how frequent those letters are.

Mr. ROHRABACHER. Do you have a number for me?

Mrs. OAKLEY. No, but let me see if I can get one.

[The information follows:]

A search of our files reveals that the Department of State has received since January 1994, 14 pieces of correspondence (representing approximately 62 specific cases) alleging corruption, abuse, or other improprieties in the first-asylum camps. Several of these letters made very general accusations about corruption and failed to identify specific victims.

Of the 14 letters, 4 claimed that Hmong refugees and their relatives were approached or paid bribes to camp officials. Some referred to a known scam where some 300 Hmong paid bribes in exchange for transportation from the Ban Napho Repatriation Camp to Phanat Nikhom Camp and the promise of illegal access to the U.S. resettlement program. When the details of this scheme were uncovered, they were sent back to Napho and several Thai were arrested.

Ten of the letters claimed extortion or rape of Vietnamese refugees by camp or host country officials. Most of these referred to the deplorable events in Indonesia where Vietnamese women were raped on Kuku Island, an interim stop before they were moved to the Galang Refugee Camp. These allegations are the subject of a current investigation by UNHCR. To date, UNHCR has informed us that in one case it has requested the concerned authorities to initiate criminal investigations. The case files in question have been reviewed by UNHCR to ensure that the screening decisions were fully justified.

Mr. ROHRABACHER. Yes, I would like to know how many people have written to complain or how many complaints you have received from people who are suggesting that there has been an attempt of extortion in this process.

Mrs. OAKLEY. Let me say that there are letters that we get at the State Department, there are letters that NGO's get, there are letters that the UNHCR gets, there are letters that the Malaysian Government gets. So, let us give you a guess of what each of those categories are.

What we have found is that the longer a refugee program goes on, the more subject it is to corruption, and this is something that we know by experience. Many of these programs start out in the first couple of years, really, whereas the best side of human nature is evident.

But, as they go on, as people see the end, these elements of corruption and manipulation come in. And, it seems to me in the 2 years that I have been dealing with this problem, it has been in the last 3 or 4 months as we have faced the end of the CPA, at the end of 1995, that there has been just a vast increase in these numbers of letters that people plainly feel that they want to try everything they can.

But, we do not throw the baby out with the bathwater. Just because you have one case like that does not mean everybody that was screened was done incorrectly, nor if you have one girl that was used does it mean that all the others were.

Mr. ROHRABACHER. I would like a specific reply on this one person's charge, and I would like to know how many such charges have been made by people that they have been the victims of extortion. I would just like some rough numbers on that.

Mrs. OAKLEY. We would be happy to get that for you.

[The information follows:]

The affidavit that Mr. Son Do sent to you, Mr. Congressman, was enclosed with a letter dated May 22, 1995 that we received from the Executive Director of Boat People SOS, Dr. Nguyen Dinh Thang, regarding his perception that the CPA process has suffered from extensive corruption. Other than the allegations contained in Mr. Son Do's affidavit, we know little about this specific incident. We shall, however, endeavor to find out more and have requested that our embassy in Malaysia look into this allegation. In the meantime, I assure you that we are concerned about and regret any instance where improper action takes place, and we support the initiation of appropriate measures to rectify situations that are proven.

Mr. ROHRABACHER. Thank you very much, and I would like to submit this for the record.

Mr. SMITH. So ordered.

Mr. Moran.

Mr. MORAN. Thank you, Mr. Smith. I would be shocked if that kind of extortion did not go on. It is now 20 years and in some of these countries we are talking about, no transaction occurs without a little extortion. So, I am not surprised that the refugee camps are not an oasis of rectitude and honesty. But, we need to pursue it and I am glad you raised it.

And, I am not surprised that some refugees are starting to get kind of picky about where they might want to go, which appears to be the case with this young woman. But, let me ask some very basic questions. I want to make sure that we not only get it on the record, but emphasized on the record. There have been 72,000 returnees to Vietnam. How many documented cases of real persecution, physical persecution, have you recorded of those 72,000 people?

Mrs. OAKLEY. I gave you in my earlier answer the three cases that we had specifically brought to our attention, we checked these out with the UNHCR. The third case about the Meditation Association, they are still investigating. Those are the three cases I have of the 72,000.

Now, I hear that there are others and that there are other charges. I have not seen those names. I have only these three.

Mr. MORAN. Three out of 72,000, even if you are only doing the random samples of maybe 20 percent, that is not a significant number. Now, obviously there are some discrepancies and that is what we need to get at. But, I can understand from the State Department's perspective, if that is all that you are aware of having been documented, then it is not as important as Mr. Berman suggested, whether there are errors in getting screened in or out. Because, if that persecution is not occurring, even if you are a political refugee, the likelihood is that there is no great offense having been conducted if you are repatriated.

But, let me ask another question that is important to my mind. I saw a figure that about 90 percent of people in refugee camps have not had prior service for the United States in any way, did not serve the South Vietnamese Army and, in fact, have no obvious status that would indicate that they would be political refugees, is that accurate?

Mrs. OAKLEY. Yes, it is. We have been able to compile quite a bit of documentation and statistics on the five camps and then an aggregate picture. Of the total population of 38,996 people in the first-asylum camps, 66 percent are under age 30, which means that they would have been 10 years old, at most, when they left Vietnam. Thirty-four percent, of course, are over 30. That out of the statistics, 89.8 percent have no claim either of having been in re-education camps for the requisite 3 years or worked with the U.S. military or any other association with the United States.

So, that leaves a picture that there are 10.2 percent out of that roughly 40,000 people who might have a claim.

Mr. MORAN. Yes.

Mrs. OAKLEY. Now, one other fact on that is, in the camps in Hong Kong, 58.9 percent come from North Vietnam.

Mr. MORAN. Is that right?

Mrs. OAKLEY. So, out of the camp population of 21,000, then you have to figure 10,500 come from North Vietnam.

Mr. MORAN. Holy smokes. So, about 60 percent are from North Vietnam.

Mrs. OAKLEY. Yes, in the Hong Kong camps.

Mr. MORAN. I understand, the Hong Kong camps. Well, I raise this because it is in conflict with my assumptions, and again, I do not think I am particularly unusual in that, to some extent, the clock in our mind freezes at a particular moment in time. When you think about it, it is fairly obvious that these are not the people that we immediately conjure up in our mind as the types of political refugees we would want to protect and bring into the country. This is a very young population, the refugee camps that are left. They would have been children when we left the country in 1975. So, this is a very different perspective than one, while it may be obvious, we do not think about it. It is really a new paradigm of thinking, is it not?

Mrs. OAKLEY. It is, and I would be certainly happy to give the committee these graphics that we were able to produce on the best information that we had gleaned from our refugee counselors who are in touch with the authorities in the camps.

I think you also have to keep in mind that the United States has accepted over 1 million Vietnamese since 1975. Most of them came from first-asylum camps in the years 1975 to 1985. As we said, 400,000 came from the Orderly Departure Program inside Vietnam. That program is still continuing, although we are coming to the end of that as well, probably by the end of fiscal year 1996, except for the special programs such as the Amerasians that will continue indefinitely.

Then, we have accepted 33,000 under the CPA. We now are issuing a lot of ordinary visas and family unification regular visas, because of the links that have been established.

So, I think as you consider the people left in these camps, you also have to take in mind the total picture of Vietnamese who come to the United States.

Mr. MORAN. Sure.

Mrs. OAKLEY. Then, let me say, there are another half million that have been resettled in this 20-year period in other countries.

Mr. MORAN. I appreciate the offer of those charts. I would like to see those in the record, if that is acceptable to the chairman.

[The charts follow in the appendix.]

Mr. SMITH. I would like a clarification, if we could, on the chart. Does the 10 percent include the immediate family of those who served in re-education camps?

Mrs. OAKLEY. I am assuming that it does, but I will check on that. That would be a group.

Mr. SMITH. Thank you.

[The information follows:]

The demographic data that were supplied to you and other members of the subcommittees were provided by our embassies in Southeast Asia and Hong Kong, drawing on UNHCR summary documentation locally. Presentation of data varied somewhat from country to country.

The regional average of 10.2 percent who claimed to have served in the South Vietnamese armed forces or government or to have been in re-education camps generally represents individuals.

We have asked our posts to clarify further whether country data files could show more clearly whether there are accompanying family members in the camps and/or whether there are close family members still in Vietnam. We will provide you with any additional information as it becomes available.

Mr. MORAN. Good. Well, I appreciate those answers, because it is sure helping me understand what we are dealing with here.

As far as the Vietnamese population that came in, it has been a boost. It has been an economic boost, it has been what you could call a social boost, strong family ties. They work hard, they are well disciplined. It has been terrific, particularly for my district. We have benefited a great deal. We are having a little trouble with some gangs now, but that is the second or maybe even third generation. But, for the most part, it has all been benefit and very little cost. And, I assume there is no great cost at repatriating more Vietnamese, but we need to do the right thing. We need to be careful of precedent, and it is a very different population.

Vietnam is growing at 8 percent a year. It is not as nice a place to live as the United States. There is no question about that. If there is persecution, we want to avoid that, but we are going to have a fair number of people who simply are not going to go back to Vietnam voluntarily, who do not get through the screening in

the way that they would want. What are the other countries' plans? It is really other countries. It is not all up to the United States.

Mrs. OAKLEY. Do you need to vote?

Mr. SMITH. Do you mind?

Mrs. OAKLEY. Not a bit.

Mr. MORAN. I have a meeting at 2 p.m.

Mr. SMITH. But, the answer will be on the record.

Mr. MORAN. The answer will be on the record. The answer probably takes a little more time.

Mrs. OAKLEY. Please.

Mr. SMITH. We are in recess.

[Recess.]

Mr. SMITH. The hearing will resume and Secretary Oakley, if you would like to answer Mr. Moran's question or perhaps provide it for the record, it is your choice. Would you like to answer or maybe provide it for the record?

Mrs. OAKLEY. Well, I am going to have to review the bidding, so to speak. Do you remember what—

Mr. SMITH. If you like, you can just provide it for the record. That might be easier.

Mrs. OAKLEY. I think it might, particularly with my faulty memory.

[The information follows:]

The Sixth CPA Steering Committee in March this year agreed that the end of 1995 would be a target for completion of work under the CPA in first-asylum countries. Rapidly declining voluntary repatriation rates have made it increasingly unlikely this target can be achieved.

The United States is firmly committed to the integrity of the CPA and to the principle that there can be no resettlement of non-refugees directly from first-asylum camps. We plan to do all we can, with the support of our international partners, to bring the CPA to a just conclusion. We believe the best way to do this is to support the unanimous agreement of the Sixth CPA Steering Committee to move forward in support of voluntary repatriation as the preferred method of return for the screened-out. It is only with this clear message that we can hope to end the confusion and uncertainty in the camps and allow people to act on self interest rather than false hope.

Mr. SMITH. If I could ask a question, again, talking about the second track proposal and the idea of perhaps doing rescreeing in Vietnam, what thought is being given to picking another country? If countries of first asylum are unwilling to accommodate such a rescreeing, why choose Vietnam, then, which could pose significant diplomatic hurdles to secure that, plus, I do believe, raise serious questions for the safety of those who might choose and then do re-screening there in Vietnam, which might be seen as an unpatriotic act or something. Why not some other country or some other spot?

Mrs. OAKLEY. We have been looking at the CPA, again, in its entirety and that people would have to go back to Vietnam, and I think our feeling all along has been that most of the people in the camps, even with rescreeing and various possibilities that have been raised and that are under consideration, still, the vast majority of those people are going to have to go back to Vietnam.

Our experience has been that it is very difficult to find places that will accept large groups of people like this, because most of these countries are concerned that they are going to be stuck with those people later on, and that the problem would be, no country

likes to be identified as a country forcing people back to any country. I think that is just universally accepted, that you are trying to get voluntary repatriation so that you do not have to do that.

If we then move the people to a possible third country, at the end of the screening process, there would still be people who have to go back to Vietnam, most of them, and so you would have to once again go through the process of trying to encourage voluntary repatriation in dealing with people who, for understandable reasons, are just going to resist that with every fiber in their bodies.

So, I think that although we have not discussed it in great depth, I think the feeling would be that it would be impossible to find that country and then the practical problems of doing that almost rule it out.

Back to my point about equity all around, we feel that the wisest and the most humane way is to promote as hard as we can voluntary repatriation back to Vietnam, with these considerations, as I have said, that are being discussed, as an encouragement to repatriation and also to take care of these concerns that have been raised here.

Mr. SMITH. If people do not voluntarily go, what are we willing to countenance in terms of physical compulsion? What is permissible?

Mrs. OAKLEY. I think our record on this of what our policy is has been very clear. My predecessor, Warren Zimmermann, in the February 1994 CPA Steering Committee meeting said that the United States in principle is not opposed to mandatory repatriation, which is a requirement that people leave, although we continue to much prefer voluntary repatriation.

We have always said that we have not changed. In 1994, we said that in order to give voluntary repatriation more time to work and to enhance efforts to promote it, we hoped involuntary returns would be suspended until 1995. This has been done. We have been encouraged that voluntary repatriation was picking up. We worked closely with NGO's who played a very important role in talking to people in the first-asylum camps, as well as Vietnamese Americans about the end of the CPA.

Everybody wants to avoid forced returns. Everybody, as I said in my testimony, wants to look at creative ways, new ways that we can use to promote voluntary repatriation back to Vietnam.

Mr. SMITH. Let me just ask a couple of final questions, and I do thank you for appearing today and for your testimony. You mentioned earlier that 3 years in a re-education camp was, if I am not mistaken and I might have misheard you, a criterion. Somebody who spent 2 years in re-education camp, that is not sufficient?

Mrs. OAKLEY. Under the terms of the ODP and I will rely on expert advice here, the criteria to meet the ODP threshold was 3 years in a re-education camp.

Mr. JURY. That is correct. For people in Vietnam, I do not think the screening imposes any set timeframe in first asylum.

Mr. SMITH. Again, is that an arbitrary number? If you had been in for 2 or 2½ years, because of your beliefs or because of your association with the U.S. military, how is the 3 years picked?

Mrs. OAKLEY. The 3 years was picked, as I understand it, in negotiations with Vietnam to set up criteria for the ODP re-education

program. In all refugee situations, we have to establish criteria; we cannot accept all the people who would come forward seeking refugee status. This has been worked out with our NGO partners, the government in question, and this was considered, I think, to be a fair criteria in Vietnam.

Mr. SMITH. Let me just ask the question on the openness or lack of openness in Vietnam. Again, I read the Country Reports very carefully. I have read other reports by human rights groups carefully about Vietnam. Even after normalization was announced, the Los Angeles Times carried an article in which high government officials in Vietnam said, do not think this is going to influence us one iota, that is my paraphrase, but it is the gist of the article, when it comes to human rights or POW issues.

Human rights are horrible in Vietnam. I happen to believe that repatriation monitoring is flawed. I think you disagree, but there are too little of them. Eighty percent of the people admittedly have not been seen. If somebody goes back after having practiced their faith in a way that the government deemed counter-revolutionary or not permissible, and if they recommit that, that is to say, they practice their faith in Catholicism in a way that the government does not like, or expresses or dissents in a view that the government does not like, and they are arrested for it, I mean, what guarantees do we have that these people who said they were refugees—do they have to toe the line once they are sent back, and fawn to the strait jacket of the Vietnamese ideology?

Mrs. OAKLEY. I think your question touches on the larger one of human rights in all of Vietnam, and I think that what we have to do is be concerned about human rights and the freedom of religion for all Vietnamese, as well as for the returnees. I think that this is the kind of thing that we are all working for. The human rights report is a matter of record. The question is, how do we improve it? How do we make or create, help create greater freedom of religion, greater political expression for Vietnam?

My own view is that the best way to do this is to ensure greater communication, more contact back and forth. I believe that the return of normal diplomatic relations will be a step in that direction, just as I believe that the presence of more international organizations, more monitors, more businesses, more exchanges, will also help in this process.

So, I cannot give you a guarantee that there will not be some incidences like that in the future. I do not think you would expect that. But, I think that you can expect that we are going to work as hard as we can for the creation of better human rights in Vietnam for all Vietnamese.

Mr. SMITH. Are the UNHCR and our government knowledgeable of any schedule for extraction raids of Vietnamese people to send them back? I mean, what is the timetable for finally closing the book on this? I mean, is there a schedule in place?

Mrs. OAKLEY. For the CPA?

Mr. SMITH. Yes, but in terms of everyone up and out by a date certain? What does that schedule look like?

Mrs. OAKLEY. We had hoped that voluntary repatriation would pick up this year, and that we would create, if you will, almost a

snowball effect of working at this. As I said, this is clearly not going to be the case.

I think we are going to have to go back and do another educational campaign in the camps to encourage people to go back to Vietnam, to work out these considerations that we have been talking about today, in which I think you understand I cannot discuss in greater detail because they are under discussion and we want to ensure that we are successful in working out some new arrangements.

So, I think, as I said, that we are not fixed to any deadline. People are not going to walk away from the CPA. People are not going to walk away from people in these camps. We are committed to bringing the CPA to a just, humane conclusion. We have tried to redouble efforts. I think we are going to do a lot more, but we do not yet have another target date. I think we are just going to have to work with a lot of people to see how we can do it humanely.

Mr. SMITH. Again, that is encouraging, but I have this sense that these are the most stubborn of the stubborn, and there may be some economic migrants hooking their car onto those who are genuinely refugees.

Mrs. OAKLEY. Yes.

Mr. SMITH. When you have so many reputable people saying, the process is flawed, the screening process was flawed and filled with corruption in some cases and certainly with a bias against affording refugee status, people who feel that they have been so mistreated may hang onto the bitter end.

Mrs. OAKLEY. That is right—

Mr. SMITH. Rather than re-education on our part or an educational effort, why not rescreening?

Mrs. OAKLEY. Well, I think the question of confidence is central to this issue, and I think that those people are going to have to have confidence, that when they go back, they will have an opportunity if injustice has been done. And, I think that we are going to have to demonstrate resolve and firmness in this.

But, if I may, if you have some ideas on how to get the voluntary repatriation going for those people who really have no hopes of coming to the United States, I would really appreciate working with you on this, because I think it is a problem we are all going to have to face together.

Mr. SMITH. I appreciate that. Finally, my confidence is low just based on everything I have seen. I can understand when the lives of your loved ones are in danger, a sword of Damocles hangs over you, and you react in a way that says, I am a refugee and they cannot do this to me. So, my sympathies are with those who are genuine. Again, the fabricators, they ought to go back. But, not those who are real refugees, and there is enough evidence to suggest, I think, that many of them are real.

Just let me stress how very important it is that we begin resettlement of the Hmong refugees immediately. These people have been screened in. It is clear that they do not want to go back, and I would just urge that the Administration look at this as a priority as well. Perhaps you might want to comment on that. But, I do want to thank you for your testimony.

Mrs. OAKLEY. Well, I agree with you completely that it is a priority. This is an issue that ought to be finished. As we said, we will take all those who are qualified under U.S. law to come to the United States. This is a chapter that needs to be closed and we are working on it.

Let me just say two things. I was informed by a UNHCR representative that the monitoring rate is 25 percent, not 20 percent, so let me correct that.

The other thing that I would like to close with, I think that in any large program like this, dealing with many human beings who have suffered and been through a great deal, that the end is always going to be difficult. The end is going to be difficult in 6 months, 6 years, or would have been difficult 6 months ago. Some of that difficulty, we are going to have to accept by holding firm and being, I think, as understanding, as compassionate, as we can be.

But, I do think that these people need to get on with their lives. Thank you.

Mr. SMITH. Secretary Oakley, thank you very much for your testimony. We appreciate it.

We invite our second panel to the witness table, and while they are coming to the table, I would like to just introduce them. First, I would like to introduce Pam Baker, a Hong Kong lawyer with extensive experience helping asylum seekers.

Ms. Baker has come to Washington twice this month to testify on the screening procedures of Indochinese in Hong Kong.

Mr. Kyle Horst, chief operating officer of World Vision, International of Vietnam. World Vision is a key American NGO which provides reintegration assistance for returning Vietnamese asylum seekers. In his previous work for the UNHCR, Mr. Horst established UNHCR's monitoring program for refugees from the south.

A Vietnamese speaker, Mr. Horst has lived in Vietnam for more than 10 years with his wife, who is a former Vietnamese refugee.

Daniel Wolf (please come to the witness table if you would), is a lawyer with the firm of Hughes, Hubbard & Reed. Mr. Wolf devotes 40 percent of his time to pro bono work on behalf of refugees and founded the Legal Assistance for Vietnamese Asylum Seekers, or LAVAS.

The fourth panelist is Mr. Shep Lowman, director of international refugees affairs for the U.S. Catholic Conference. After extensive experience dealing with Vietnam in the State Department, Mr. Lowman retired from the Foreign Service in 1988. As former president of Refugees International, Mr. Lowman attended the Geneva meeting which devised the Comprehensive Plan of Action and has been active in this field ever since.

Finally, Dr. Nguyen Dinh Thang, executive director of Boat People SOS Born in 1958 in Saigon, Dr. Thang escaped by Vietnam by boat in 1978. He obtained his Ph.D. in engineering from Virginia Tech. Dr. Thang has been active in community activities since his arrival in the United States and joined Boat People SOS in 1988.

Finally, we will also hear from Claude Pepin, vice president for organizational development and strategic planning at World Learning. World Learning, along with Save the Children and World Edu-

cation, is part of a consortium of American NGO's helping to re-integrate boat people after they return to Vietnam. Mr. Pepin, through his work at World Learning, has been deeply involved in both the resettlement and reintegration of Indochinese asylum seekers.

I would like to ask Mr. Wolf if he could begin this afternoon.

**STATEMENT OF MR. DANIEL WOLF, ATTORNEY, HUGHES,
HUBBARD & REED**

Mr. WOLF. Thank you, Mr. Chairman. I will try to be brief, so that there can be more time for questioning. About 6 years ago, with the start of the CPA, Thurgood Staltenberg, the former High Commissioner for the UNHCR stated, and I believe this is a very correct statement, and this is a quote, "The purpose of the CPA is to provide resettlement for those who are refugees and repatriation for those who are not. This is proper, and in accordance with international practice only if the screening process is fair and credible."

Mr. Chairman, you have alluded to the report of the Lawyers' Committee for Human Rights. But, not only the Lawyers' Committee, every independent human rights organization that has reviewed the screening procedures, including Asia Watch and Amnesty International, have concluded that those procedures were critically flawed. Among the flaws listed were such problems or defects as denial of the right for legal representation, biased and incompetent immigration officers, incompetent and poorly trained interpreters, and the failure to inform asylum seekers for the reasons for the denial of their claims so they could prepare their appeals.

While the human rights groups have uniformly condemned the screening process, the State Department has represented and continues to represent to this committee, to this Congress and to the American public, that the screening was fair and was implemented in a human spirit.

Mr. Chairman, I have been personally observing the screening procedure since January, 1990. I spent 6 months observing the implementation of the screening procedures from inside the detention camps and I can tell you with absolute confidence that the State Department's description of the screening procedures is grossly inaccurate, and that in reality, the process was a mockery of justice.

The committee need not take my word for this. Mrs. Oakley has asked for specifics and we have given specifics to the department time and time again. Let me give you just a few examples taken from actual opinions, first from the Hong Kong Immigration Department. HK1, and I will not give the name of the asylum seekers to preserve their confidentiality, HK1 burned the Communist flag during the Tet celebration in 1988, in protest of the maltreatment he and his family had suffered at the Communist regime. He was severely and repeatedly tortured. The review board stated that even accepting the event as correct, "...it was an admitted criminal offense and his resultant punishment did not amount to persecution."

A second case involves HK2. HK2, after witnessing Communist atrocities at Hue, surrendered to the Army of the Republic of Vietnam, and served with both the ARVN and the U.S. Army's 101st Airborne Division.

After the takeover of South Vietnam, he spent 9 years in re-education camps and was eventually released for bad health. The review board denied his claim, stating that, and again, this is a quote, "The reason for his sentence was the serious and treacherous nature of his actions in surrendering to the enemy and fighting with them in time of war. An offense of this nature does not bring him within the convention and protocol on the status of refugees."

A third case denied by the review board, HK3, a Vietnamese boat person who organized a petition to prevent the destruction of a Buddhist temple because, again, and this is quote, "The applicant said he dare not take part in the work of destroying the temple. His statement dare not emphasize his superstition." He did not say he would not destroy the temple. The authorities tried to arrest him, as he was one of the organizers of the petition.

Afraid of the consequences, he fled his homeland. These reasons do not fall within the convention of the 1951 refugee convention.

Some cases from the Philippines, P1. In this case, the immigration officer wrote that the following facts had been established, "That applicant's father was associated with a past regime and a soldier of the South Vietnamese Army, that after the fall of Saigon, they were sent to the NEZ, that their property was confiscated by the government, that his education was halted by the new regime, that his economic well being was rendered miserable because of restrictions imposed by the Communist Government. He was denied the opportunity to continue his studies. In obtaining the facts of this case, it is clear that applicant herein has not satisfied the requirement imposed by the 1951 Geneva Convention."

One would think that after that litany of persecution, that the result would have been the opposite.

The claim of P2 was denied, and this is a quote, "Because his difficulties, which included a year in detention, only started when he was involved in anti-Communist activities."

The opinion in P3's case reflects that she was sexually abused after being arrested for publicizing a Catholic religious ceremony. The officer denied her case on the ground that such sexual abuse, "...is a criminal offense committed by said police officers. She could have filed a case against them. The alleged molestation happened in 1988, when the judicial system in Vietnam was already at work."

Mr. Chairman, as you well know, I could go through dozens and dozens, and if I had them available, hundreds of cases that use exactly this type of logic, or lack thereof, in denying the claims of genuine refugees. Even in those rare cases where the refugee criteria of the 1951 convention appear on the face of the opinion to have been correctly applied, it is impossible to have any confidence in the accuracy of this decision, because the factual record upon which it is based has no integrity.

I have reviewed the immigration records with asylum seekers line by line, and when I have done that, I have discovered patently obvious errors in transcription, responses twisted or distorted to weaken the applicant's persecution claims and answers recorded to questions that were never asked. Now, I would not ask this com-

mittee to take my word for it. The comments in the files are incredible on their face.

For instance, in one case in which the applicant and his family had been forcibly relocated to a Vietnamese Gulag, an NEZ, deep in the jungles of DacLat, the immigration officer wrote that he was not denied the right to education, because he admitted he could go to college there.

In many other cases involving families with intimate ties to the former South Vietnamese military, the record simply reads, and this is a quote from many files, "The family situation did not change after 1975." Mr. Chairman, I submit to you that in all of those cases, the family situation changed drastically after 1975.

Though it is a historical fact that the children of many former ARVN soldiers were denied educational opportunities in the years after the fall of Saigon, it is often recorded in the immigration files that such children, "...quit school because they did not like to study." Many of the decisions of people denied—actually, a great majority of the decisions that I saw—had the notation in them that the person left Vietnam because, it stated that he left Vietnam because, "...he desired a better living overseas."

Now, the Vietnamese boat people may not know much about the screening process. They are not told much about it. But, one thing they know not to say is that they left Vietnam because of a desire for a better living overseas, because they knew that was a death knell for their claim.

Now, we do not have the records of denials from countries like Malaysia, Indonesia and Thailand, because none of those countries ever provided written reasons for the decisions in those cases.

But, based on extensive interviews with asylum seekers, I would submit that there is every reason to view UNHCR's insistence that the screening was fair in these countries with profound skepticism.

In Indonesia, for instance, the UNHCR has verified reports of widespread corruption involving immigration officers who extorted bribes and sexual favors in exchange for positive screening results. In Thailand, there were also reports of widespread corruption.

Mrs. Oakley had alluded to the notion that UNHCR will review these cases if they are submitted to them, but, in fact, Mr. Chairman, we have submitted dozens of cases to the UNHCR after the screening process had run its course, and the result that we have gotten back from the UNHCR is, we cannot look back over these decisions and reverse them, because it would compromise the finality of the process.

Mr. SMITH. Did they give you that decision, if you do not mind yielding, on paper? I mean, it seems to me that finality versus justice being accomplished—these can be two different things.

Mr. WOLF. I have a letter from Shamsul Bari, who was the refugee coordinator for Southeast Asia, in which he made that comment.

Now, subsequently, they have actually looked at some cases that were presented to them, but that comment illustrates the attitude that they have taken with respect to those cases.

So, in only three cases of which I am aware have the results been reversed after the process had run its course.

Mr. SMITH. Thank you.

Mr. WOLF. Mr. Chairman, something must be done to correct the injustices of a process that has resulted in the separation of families and the denial of refugee status to a great many persons whose claims are factually indistinguishable from thousands of claims that have been accepted.

Prompt action is necessary, not only to protect genuine refugees, but to avoid the humanitarian catastrophe that I believe is likely to come about if we simply wait until the first-asylum states decide to forcibly repatriate the boat people en masse.

Together with Shep Lowman and Lionel Rosenblatt, president of Refugees International, I have helped prepare a proposal that I believe stands a realistic chance of breaking the current impasse and bringing the Indochinese refugee program to an end in the humanitarian spirit in which it was founded two decades ago.

If there is no objection from the committee, I would like to submit that proposal to the record.

Mr. SMITH. Without objection, so ordered
[The proposal appears in the appendix.].

Mr. WOLF. I will be available to take any questions, along with my colleague, Mr. Lowman, concerning that proposal. Thank you.
[The prepared statement of Mr. Wolf appears in the appendix.]

Mr. SMITH. Ms. Pam Baker—oh, I am sorry. Mr. Davis, would you like to make a comment?

Mr. DAVIS. What if we finish the panel first? I will make a brief statement following hearing everybody and put it in my question time. That will be fine. Thank you.

Mr. SMITH. Ms. Baker.

STATEMENT OF MS. PAM BAKER, ATTORNEY, HONG KONG

Ms. BAKER. Mr. Chairman and members of the subcommittee, I am very pleased to be here and have the chance to talk to you all and to have heard what has been said today. One or two points came up in Mrs. Oakley's speech, which I would quite like to address, if I may.

First of all, the matter of the three people who have complained or had complaints made on their behalf. Vong A Nhi was a Nung. That is an ethnic minority, and he went back to Vietnam, forced back, and he underwent a most intensive interrogation as it were, a debriefing, in particular being asked many, many questions about how many Americans he had met, how many lawyers he met, how many of those lawyers were American. Most extraordinary discriminatory process, which went on for 3 or 4 days, before he was allowed to go home and indeed, he did have great difficulty, I think, in settling down when he got back.

Since Mrs. Oakley says that he actually complained that too many people visited him and he felt this carried too much attention to him, I have not heard of him for some time.

The second case, Nguyen Van Kha was someone I knew quite well. He interpreted for me. He was a dissident in Vietnam. He was at the Foreign Languages University in Hanoi before he left, and he got into trouble there for making a speech in 1988. He was sent to re-education, and he escaped from re-education and fled to Hong Kong.

In Hong Kong, he was active politically from the moment that he arrived, and when eventually he was forced back after he had attempted to commit suicide, when he got back to his home village, we heard that he had been arrested. He was subsequently charged with murder and robbery.

At that time, I was told that only the British Embassy is able or has agreed to monitor forced returnees, that UNHCR only monitors voluntary returnees. That is my information. So, I wrote to everybody concerned. To my knowledge, that is now over 18 months ago. Nobody from the British Embassy, the UNHCR or anywhere else, has been allowed to visit Kha. He has been tried, he has been sentenced, and no one has been allowed to visit him.

I do not believe he is a robber and a murderer. Alas, I have no proof.

The third one was the Ching Hai people. They went back ages ago. UNHCR was alerted to this more than a year ago. They are still looking at it. It does not sound like awfully quick monitoring. Perhaps we might hear more about that later.

What we are saying here is that no one can say, with their hand on their heart, that forcing Vietnamese boat people back to Vietnam will not be sending back refugees. Now, that is not to say that all Vietnamese boat people are refugees, but it is to say that the screening decisions have been so bad that they cannot be relied upon.

I hear what my friends say about the process being flawed, and I agree, but that, in fact, would not have been a basic and fatal flaw had the screening not been carried out in Hong Kong, which is where I come from, with bias and prejudice. It was not carried out as instructed by the UNHCR, in the spirit of justice and understanding. There was no justice. There was no understanding.

Therefore, the numbers game we cannot play, because we do not know how many of those rotten decisions actually masked a true refugee claim. All that we can say is, it is not safe to force them back, and I have seen hundreds and hundreds, maybe even thousands of these decisions. I can say that I have not seen more than a handful that were good decisions. As I say, not necessarily all refugees, but that is hard to tell under a bad decision.

Skipping a bit, because we have heard quite a lot about the screening, after you have been screened out by immigration and the review board in Hong Kong, there were two possible remedies. One was judicial review. That is to say a process in the high court, where you sought a review of a bad decision. The government was heard to say that judicial review was, of course, available to asylum seekers who were aggrieved at the decisions which had been made.

In the event this was not true, because the applicants had no money to file suit. Some of us present here today got together, and we did, in fact, file suit for, in the end, nine of them. One had judgment in his favor handed down. The second judgment, in the case of a woman persecuted for her religion in Vietnam was due the following morning. That would have been even more embarrassing to the government than the first one had been. Frantic negotiations took place, and the lot were swept under the carpet, with an offer of rescreening by a specially constituted board.

Despite this specially constituted board, four of the nine were, indeed, found to be refugees in the end. That offer was accepted and those cases were disposed of, which was a great sadness, because no one, since then, has been legally aided for a judicial review of a screening process. As I say, they have not got that kind of money.

There are, to my knowledge, or there were last week, 848 outstanding applications for legal aid to seek judicial review of the screening process. If any of those applicants is forcibly repatriated, that is a serious risk of refouling a refugee. That was the first supposed further remedy.

The second, of course, is the UNHCR's mandate, which can be exercised when they feel something has gone wrong. Hong Kong Government used to brag about that as a safety net. While they were speaking of judicial review and the possibility of mandate, the Hong Kong Government was making sure that an asylum seeker was unable to obtain the interview notes upon which the decisions were based, and unless he wrote within 3 months of the review board's decision to the director of immigration, saying in his letter, I wish to seek advice on the possibility of a judicial review, he would not get his papers.

Now, not many Vietnamese asylum seekers have ever heard of judicial review, and the Refugee Status Review Board's notice of its decision bears on its face the words, this decision cannot be reviewed by any court.

Both of those statements by the Hong Kong Government were therefore hypocritical and cynical in the extreme. It is effectively impossible to seek judicial review or a mandate when you do not have the material upon which the decisions were based.

We have heard that the screening in the region is corrupt. There are reports on the screening in Galang and the screening in the Philippines and we have today heard that somebody was required to pay \$8,000 for refugee status in Malaysia. So, there we had a different kind of corruption in Hong Kong, a kind of moral corruption. They are all as bad as the other, and it seems to me that none of those decisions are safe.

Looking at the CPA, yes, I think the first part has, in fact, been successful. The first part of the CPA was that efforts were to be made to ensure that more people did not leave Vietnam. The figures were huge in 1989. That was the year when the CPA was signed.

Since then, they have dwindled, until 42 arrived in Indonesia. Now, from the first of January, 1992—so, that is more than 3 years ago, 42 arrived in Indonesia, 24 arrived in Thailand and 6 arrived in the Philippines, in these past 3 years. That is up to the end of last year. I have not got the figures since then, but I am sure if it had been a huge change, we would have heard about it.

Only one Vietnamese person arrived in Malaysia since the end of 1990. Mind you, they were pushing the boats off, so maybe more arrived, but they never actually landed. So, one could say that that part of the CPA has been successfully concluded.

The second part was the maintenance of first asylum. Most Southeast Asian countries have stopped accepting boat people, or else the boat people have stopped coming, and in February 1994, a CPA agreement gave the individual countries power to make

such a decision for themselves. It has to be said that popular opinion in Hong Kong would be in favor of cessation of first asylum.

One could say, then, that this part of the CPA is therefore coming to an end. The third part of the five parts of the CPA status determination, as we have seen this part is at an end, screening is virtually over. Units are disbanded, personnel dispersed. In those few cases in which we have been able to achieve a so-called re-screening in Hong Kong, the result has been as bad and as badly arrived at as before. I have one with me, if anyone would like to see it.

There is no possibility, to my mind, of first-asylum countries either being willing or able to rescreen the boat people themselves. So, that part of the CPA is at an end, though I doubt if it could be called successful.

The fourth part, repatriation of those screened out as non-refugees, this has been fraught with difficulties. In the first place for Hong Kong, the decision to screen was made unilaterally on the 15th of June, 1988. All by themselves they did it. It was not for another year, until the CPA came in. Now, when Hong Kong did that, they made no arrangements whatsoever for the removal of such people as would be screened out. Complete lack of foresight.

So, no moves were made until 1989, when arrangements were gradually made. It appeared that the talks in Vietnam centered largely on foreign investment and how much of it would come along with the repatriation. Forced repatriation is an abomination to my mind. The way I have seen it executed in Hong Kong is disastrous. It leads to tear gas attacks on women and children. It leads to violent transfers, confrontations and then in the end, it leads to pictures which I understand you have seen here, of people strait jacketed, handcuffed, rolled in blankets, sedated, and bundled onto airplanes. This cannot be something that we wish to continue to see.

Voluntary repatriation is the other arm of that, and there have been fluctuations from the beginning of that program. It has come and it has gone. I think I could say that the proposal that you have made, Mr. Chairman, is a deterrent, to some extent, to voluntary repatriation. Of course they want to wait and see what happens. You would, I would, anybody would want to wait and see.

What it has not done, what your amendment has not done, is to provoke or inspire the violence which we have seen. That violence has continued since 1988. There is chapter and verse on it. Tear gas, truncheons, all of it. This amendment has not caused the violence. It has caused a hiccup in voluntary repatriation, and we shall see what happens when decisions have been made.

There are also seven categories we have all been talking about. There are categories of people who are really in extraordinarily difficult positions. There is a quite a large category who have volunteered to return to Vietnam and who are not accepted by Vietnam. Some of them, because they are not deemed to be Vietnamese nationals, some of them because they have no household registration, and therefore have nowhere to go to, and others still whose whole families have been resettled overseas. And the Vietnamese delegation which visits the camp in Hong Kong said to some of those people, why do you not go and join your family overseas, at someone

who is being screened out and is volunteering to go back. So, as you can see, there are difficulties with voluntary repatriation.

The Comprehensive Plan of Action has reached a stage when we have got to have a look at it again. Yes, it has had its successes, yes, it has been useful. If it is going to go on being useful, it needs a jolly good shake. On occasions, it has seemed to me that this was a lifeline which turned into a hangman's noose. Because, if you were screened out, family reunion with your family overseas was no longer open to you, because the CPA said you could not be resettled if you had been screened out. That has got to be changed. That is really important, and family reunion, I think, is something that we must all feel is a necessity in these circumstances.

Mr. DAVIS. Ms. Baker, I am going to have to interrupt you right here. We have a vote going on the floor. Mr. Smith has gone before me, and I am going to declare a brief recess while we vote. He is going to try to come back but they might have two in a row. If you could bear with us, we will recess the meeting and convene momentarily. Thank you very much.

[Recess.]

Mr. SMITH. You may resume.

Ms. BAKER. Mr. Chairman, I am just almost finished, you will be glad to hear. It seems to me that the Comprehensive Plan of Action in its last days needs a jolly good shake. It can be restarted to do all those useful things that we want it to do. We want to make sure that no refugees are sent back to Vietnam. We want to make sure that those refugees are resettled. We want to see that those people to whom the United States of America owes a responsibility, like the soldiers and the people who worked for them, are resettled.

We also want to see, and not only in the United States, that family reunion should be pursued. It must be appropriate that the other resettlement countries, signatories to the CPA, should also be involved. I heard yesterday that there is concern in Australia and that one of the members of the executive committee of the International Commission of Jurists is to present a proposal to the UNHCR in Geneva on behalf of the Refugee Council in Australia, concerning exactly the points that we have been looking at today.

This proposal seeks to have the screening process reviewed and puts forward certain categories very much as does this amendment. It appears to me that the United States has a conscience, and also, of course, has a responsibility, but I do not think they should be alone. I think there should be a move following your example, in all the other countries, to see that this is brought to a dignified and humane end. Thank you.

[The prepared statement of Ms. Baker appears in the appendix.]

Mr. SMITH. Ms. Baker, thank you very much for your testimony. I would like to ask Mr. Kyle Horst, chief operating officer for World Vision International to proceed.

STATEMENT OF MR. R. KYLE HORST, CHIEF OPERATING OFFICER, WORLD VISION INTERNATIONAL

Mr. HORST. Thank you. I would like to express my appreciation to Chairman Smith and Chairman Bereuter for the opportunity to appear here today. I am chief operating officer of World Vision International of Vietnam, which is carrying out humanitarian relief

and development programs, including projects which assist in the reintegration of returnees.

Prior to taking this assignment with World Vision, I served as a repatriation officer with the U.N. High Commissioner for refugees, where I was responsible for establishing UNHCR's monitoring program for returnees in the southern half of Vietnam. For the record, I would like to make the correction that I have lived and worked in Vietnam for only 5 of the last 10 years.

World Vision worked extensively in southern Vietnam prior to 1975 and resumed its humanitarian activities in the Socialist Republic of Vietnam in the late 1980's. For the past 3 years, we have carried out a collection of reintegration projects for persons repatriating to northern and central Vietnam in Haiphong, Thua Thien-Hue and Quang Nam-Da Nang, three provinces which are among the half dozen or so which have the greatest number of returnees.

These projects are funded in large part by the U.S. Department of State, as well as by contributions from World Vision organizations in the United States, Hong Kong, Japan and Taiwan. In keeping with World Vision's commitment to help the poorest of the poor, our reintegration projects are designed to assist the most needy persons in any location. This is a population of world beneficiaries which is half returnees and half non-returnees. This formulation is in keeping with agreements that were worked out between the United States and Vietnam in 1992, at which time the U.S.-funded reintegration assistance program began.

Our experience carrying out these reintegration projects in World Vietnam has been a positive one. Reintegration projects carried out in the communities from which people left and to which they are returning provide assistance which facilitates not just the reintegration of individual returnees, but which promotes, as well, the largest successes of the Comprehensive Plan of Action—in general, and involuntary repatriation in specific.

Like the allowances provided to individual returnees by the UNHCR, reintegration projects provide an important incentive to return. But, the benefit of reintegration projects goes beyond individual returnees, building goodwill among the local population and officials who perceive this assistance as being brought to their community by their attorneys.

With the end of the European community and Nordic assistance to returning Vietnamese programs earlier this year, and with reductions in the allowances provided by UNHCR to returnees, ongoing reintegration programs carried out by international and U.S. non-governmental organizations like those currently being funded by the Department of State have taken on an increased importance.

The monitoring of returnees was conceived at the inception of the CPA as the responsibility of UNHCR. The first UNHCR officer tasked specifically to monitor returnees arrived in Hanoi in mid-1990. An additional officer based in Ho Chi Minh City arrived in late 1991. At present, there are a half dozen officers in Vietnam whose primary responsibility is returnee monitoring, most of whom speak Vietnamese and who can conduct monitoring interviews without having to rely on an interpreter.

Their function today is as it was 5 years ago, to visit returnees in their homes and report on their progress in restarting their lives, specifically as regards Vietnam's commitments under the CPA, to not prosecute them for the criminal offense of a legal departure, to restore their legal residence and ordinary civil rights and obligations and to provide normal and unimpeded access to employment, education and social services.

UNHCR's monitoring accomplishments in Vietnam to date are impressive. About one fourth of the more than 73,000 returnees have been met and interviewed personally by a UNHCR officer. More importantly, there is nearly full coverage of repatriation locales at the level of district, which is a Vietnamese administrative unit which corresponds roughly to a county in the United States.

This approach to locales, which was implemented in 1991 in southern Vietnam and in early 1993 extended to the whole country, means that almost all of the 200 of Vietnam's 600 districts which have at least one returnee residing there have been visited at least once by a UNHCR monitoring mission. It is predicated on the fact that the situation of returnees in any given locale is similar, and that registering a monitoring presence in all locations is more important than simply increasing the gross numbers of returnees visited.

But, monitoring has grown to become something more than just reporting done by UNHCR. The commencement of the EC, NARV and other NGO reintegration programs in 1991 and 1992 established a new type of interaction between members of the international community and the returnees. And, onsite contact with repatriated persons in their homes and their work places was no longer simply the province of UNHCR officers.

The numbers of returnees grew and so did the number and scope of programs designed to assist them. Interest in the progress of repatriation and reintegration drew the attention of the international media and of human rights and advocacy organizations, as well, further diversifying the field of players to the point that it is today. Access to individual returnees, which was a concern for UNHCR and even the strongest supporters of the CPA just 5 years ago, is accepted by all if not taken for granted. The average return has a number of options available to them, should they wish to raise a question or register a concern.

The free and unfettered exchange between returnees in those districts where World Vision does reintegration projects and our expatriate staff who manage and monitor them is just one example of this.

The successes of volunteer repatriation, reintegration and monitoring well exceeded the expectations of the international community 6 years ago when the CPA was established. The proof that the relevant parties to the CPA, and particularly Vietnam, have fulfilled their commitments to enable the return and save the dignity of those asylum seekers who see no future anywhere else is the simple fact that for every person who remains in a camp or holding center in southeast Asia, two have already returned home.

This is not to say that reintegration assistance and the monitoring of returnees should be diminished. To the contrary, in this final

phase of the CPA, monitoring and reintegration efforts need to be not merely affirmed, but strengthened and redoubled. Both have served as an incentive to return and can continue to do so. Any initiative now which would limit or reduce repatriation or reintegration assistance would be counterproductive, and likely impede rather than hasten an acceptable and appropriate end to the CPA.

As regards monitoring, it is my conviction that the role of UNHCR remains essential, specifically in its ability to make interventions with local officials responsible for facilitating the reintegration of returnees in their communities. Such intervention-oriented monitoring provides for returnees, their neighbors and community members, and for low level Vietnamese officials, an informal but important line of additional accountability to the CPA policy commitments made by the central government.

Earlier this month, admission from UNHCR's Division of International Protection travelled to Vietnam to assess the effectiveness of monitoring. A report is being prepared, and when it is submitted to Madame Ogata, I have no doubt that it will make suggestions for strengthening and ensuring the continued effectiveness of the UNHCR role.

Mr. Chairman, the leadership of the United States has been the fundamental basis for the international humanitarian effort to assist Vietnamese refugees over the past two decades, and it remains a critical factor today. Various initiatives have been proposed over the past 18 months to bring an appropriate end to the CPA, and specifically to forestall the forced repatriation of large numbers of asylum seekers.

Events since the sixth meeting the CPA's Steering Committee in mid-March have served only to highlight the limitations of UNHCR's role in the asylum countries, given the present situation, and the need for leadership from elsewhere. At the very minimum, U.S. criteria for the orderly departure program, which had been significantly restricted over the past few years, should be revised and restored to what they were in the early 1990's, so as to provide the greatest possible access to asylum seekers who were not screened in, but who have the closest and most compelling ties to the United States.

The other new initiative that is proposed should build on the successes to date of voluntary repatriation and affirm the inevitability of return to Vietnam for the vast majority of those who remain in the camps. More than 73,000 people have accepted the assurances of the international community that for those who are not refugees, return home is the only option. Our obligation extends to them, as it does to those who have not chosen to return.

It is our conviction that any further reconsideration for resettlement of persons who may be identified as wrongly screened out must take place in the context of return to Vietnam. But, with or without a new initiative to address those who have not yet chosen to return, the United States should continue and extend its support both for the monitoring of returnees and for funding of reintegration assistance projects in Vietnam, so as to maintain these basic and essential incentives to return.

Thank you, Mr. Chairman. I would be happy to take any questions.

[The prepared statement of Mr. Horst appears in the appendix.]
 Mr. SMITH. Thank you, Mr. Horst. I appreciate your testimony.
 I would like to ask Dr. Nguyen Dinh Thang if he would now address the panel.

**STATEMENT OF DR. NGUYEN DINH THANG, EXECUTIVE
 DIRECTOR, BOAT PEOPLE SOS**

Dr. THANG. Thank you, Mr. Chairman. Two weeks ago at the Foreign Affairs Center, Secretary of State, Winston Lord had the following to say about repatriation, "So far, I must say that there has been no evidence of any mistreatment of boat people who have gone back." This is also the position of the UNHCR and a number of NGO's. Some U.S. officials have gone as far as implying that therefore, everyone in the camps can return safely.

While I believe that persecuting the average returnees is not in the interest nor is it a policy of the Vietnamese Government, I find it preposterous to ignore the reality that the Communist regime in Vietnam remains a very repressive one. The Government of Vietnam has not abandoned its policy of repressing the so-called reactionary elements.

Last month, two former Communists were imprisoned for simply suggesting to the government to hold free elections and to obey its own laws. At this very moment, there are several American citizens who continue to be arbitrarily detained in Vietnam on trumped up charges. I would like to mention two cases, of Mr. Nguyen Tan Tri and Tran Quang Liem, who have been detained in Vietnam since 1993, when they visited Vietnam on an official visa approved by the Government of Vietnam to attend a conference in Ho Chi Minh City, also approved by the government.

But, when they arrived in that city, the government reversed its position and outlawed the conference. These two gentlemen, both American citizens, were arrested on charges that they were involved in anti-government activities and they continue to be in detention to this day.

There are many in the camps who belong to this black-listed group of reactionaries and who have been severely persecuted by the government because of their family backgrounds, their political opinions or their religious beliefs and practices. They, however, have been wrongly denied refugee status because of the serious mistakes and abuses in screening.

This group of at-risk refugees have strong reasons to fear persecution if repatriated. Virtually all of them are still in the camps, refusing to repatriate. Some have even committed suicide so as to escape deportation.

Comparing this black-listed group with the 72,000 who have returned is to compare oranges with apples. Even with regard to this latter group of 72,000 returnees, there are good reasons to believe that Mr. Lord had not been fully and accurately informed when he made the above assertion. I am aware of several instances of harassment, mistreatment and imprisonment of returnees, mostly through intercepted documents.

I would like to cite three examples without disclosing names to protect the safety of those involved. Case one returned to Vietnam in 1989, at the UNHCR's promise of protection. He was imme-

diately sent to prison for a previous escape attempt. Case one's brother remains in Hong Kong and reported the incident in his refugee claims. The Hong Kong Government admonished UNHCR for having allowed such a damaging allegation to be made without thorough investigation.

The UNHCR Chief of Mission replied, "I am personally familiar with this case precisely because of its potential implications for the voluntary repatriation program and can assure you that the relevant statements in the submission correctly reflect facts which have indeed been ascertained by the UNHCR." Case one's father was subsequently granted refugee status.

In June, 1992, I personally asked a State Department official who was on a mission to Vietnam at the moment to look into this and other cases of returnees who had faced serious problems in Vietnam. Back in the United States, this official reported that he had not been able to meet with any of those returnees. He specifically reported that according to the UNHCR, case one had been released after 15 months in prison. Case one had vanished from home. Even his mother did not know his whereabouts.

The UNHCR speculated that case one had escaped back to Hong Kong, but there has been no confirmation of that.

I would like to point out that this case one was not among the three cases mentioned by Mrs. Oakley, even though it had been reported to the State Department.

Case two, which was also reported to the State Department and was not included among the three cases mentioned by Mrs. Oakley a while ago, case two returned to Vietnam from Thailand in 1993. He was immediately arrested and sent to prison for a previous escape attempt, which he had organized in 1989. His wife wrote back to the camp, asking intervention from the UNHCR, but her call for help has gone unanswered so far. Case two is still in prison.

When a delegation of American NGO's visited Vietnam late last year, I submitted to them a number of sensitive cases, including this one, with a request for investigation. This delegation, however, decided not to look into any of the cases, reportedly because they did not believe access would be allowed, and feared that outside attention could further jeopardize these returnees.

Case three was forcibly returned to Vietnam in September, 1994, from Hong Kong. David Ireland, a lawyer with Legal Assistance for Vietnamese Asylum Seekers, made a surprise visit to him 6 weeks later. Following is the report from Mr. Ireland, "Case three was stunned when I appeared on his doorstep, and clearly very worried about my presence. However, he quickly admitted me into his home, and we spent the next 2 hours discussing his situation. After landing in Hanoi, case three was brought to a small room with three public security officers. For the next 3 days, he underwent intense interrogation. The public security officers were intimidating and often threatening. Almost immediately, the officers produced a file containing information on case three. The file included several articles written by case three and published in overseas Vietnamese newspapers and magazines.

After questioning him about his personal activities, the officials focused on others in the camps. They were particularly interested in the various anti-Communist organizations and its leaders. The

security forces in Vietnam are quite familiar with camp activities, and must be receiving information directly from the camps. At the conclusion of the interrogation, case three was told that he should consider that day as day zero, and not to have any contact with people he met in Hong Kong."

Now, Mr. Ireland then noted that case three was allowed to work, but was explicitly told he should not leave Hanoi without the permission of the authorities. He had not been visited by the UNHCR in the 6 weeks of his return. Indeed, it is not the UNHCR's mandate to monitor the safety of those forcibly repatriated.

One might argue that the intense interrogation and restriction of case three's freedoms of movement and association do not amount to persecution. However, it is pretty clear that over his head hangs Damocles' sword. The Vietnamese security police has meticulously compiled thorough dossiers, including pictures of people politically active in each camp. Applicants for voluntary repatriation are often asked to report their own activities in the camps and inform on others in the camps during the interview with the Vietnamese delegation before repatriation.

Once in Vietnam, they will again be briefed by the security police for 2 to 3 days in a transit camp. There are reasons to believe that the Vietnamese security police has informants in the camps who provide up-to-date information on various aspects of camp activities.

I would like to quote from a letter written by case four, who had signed up for repatriation and had been moved to the Lo Wu Transit Center in Hong Kong from the Whitehead Detention Center, also in Hong Kong. "On April 15, I was interviewed by the head of the Vietnamese delegation. He asked me which camp and section I lived in. I told him Section 15B. He immediately asked me whether Mr. K. is the elected head of the section. He then asked me about people in the section belonging to the anti-Communist coalition. I said I did not know anyone. He told me that is impossible, and described in detail the activities of that coalition. He also cited names. I was really frightened. He even knew about the death of Mr. Sinh, which just occurred the day before."

Intercepted documents of the UNHCR shows that this agency is aware of many incidents of harassment, mistreatment or imprisonment of Vietnamese returnees. However, I am afraid that the same standards used in screening, which have been described by Daniel Wolf, have also been applied to the monitoring of returnees.

According to these standards, activities that go against the government's national policy are political crimes. Similarly, escaping persecution is also a prosecutable crime. Incidents of mistreatment and persecution are thus dismissed as prosecution against criminal activities and reported as such.

For instance, the UNHCR is well aware of several members of a Buddhist sect being severely mistreated upon return. Some have renounced their faith under duress. Others have gone into hiding to keep their religious practices. The UNHCR monitoring officer in Hanoi explained that this Buddhist sect, although a religious faith, is also highly political and its leader outspoken and critical of the

Vietnamese Government. He concluded that the laws of the country must be respected, particularly with regard to national interest.

In cases like case one, where returnees are imprisoned for past escape attempts or for organizing their own escapes, the UNHCR also distinguishes them away as prosecution. When one of these cases was brought to the attention of the UNHCR, Dr. Alexander Cassella, at the time special advisor in charge of the repatriation program, responded, "It is universally recognized that organizers should be prosecuted, and I see no reason why we should ask the Vietnamese to commute their sentence."

The problem is, many refugees have organized their own escapes. In its memorandum of understanding on repatriation, signed with the UNHCR in 1989, Vietnam has only agreed not to punish returnees for their very last escape attempt. It does not exempt returnees from punishment for other escape attempts, organizing their own escapes or for crimes, whatever that means, committed prior to their escapes.

I am also aware of several returnees having been harassed, mistreated by the local authorities who have written back to the camps to their friends and relatives, advising them not to return. Such letters, if publicized, will irreparably damage the voluntary repatriation program.

Following is an excerpt from a letter dated March 25, 1995, a very recent letter of case five, a returnee from Indonesia, who has a brother in the United States. In that letter, he mentioned about another brother T., still in Indonesia. "It has been a month since I returned to Vietnam. So many things have happened to me, I feel I need to write to you immediately and ask you to tell T. not to return to Vietnam for any reason. He will be arrested. During my 2 days at the Tu Lip Detention Center, I was interrogated by the authorities. After going through my biodata, they then asked me why T. did not return. I told them that he was seriously ill and would not be able to endure the repatriation flight. They let me go home.

The next day, I was again summoned to the police station. My interrogator was new in the area, and so I had hoped he would not know much about our family background. But, it turned out that he knew everything as if he had been with us in the camp all along. He scrutinized me about T.'s activities in the camp. He also knows about brother H., who was executed for anti-government activities in 1976. He asked me my motive for returning to Vietnam, insinuating that I could not be trusted. I was so frightened and so upset by his mentioning the tragic death of our brother H. Later I found out that a neighbor who also recently returned from Indonesia had reported everything about us to the local authorities.

Three days later, I was again summoned to the police station for another round of interrogation. This time, the interrogator focused on the organizations which T. belonged to in the camp. The interrogation was very intense. A few days ago, I was again interrogated. Please tell T. that he should not return."

By the way, T., the brother mentioned in this letter, has been imprisoned by the Indonesian authorities for actively opposing repatriation. Case five signed up for repatriation because Indonesian

authorities promised to him that if he did so, then his father would be released. Unfortunately, his father is still in prison.

I have written letters to the UNHCR on behalf of T., requesting intervention, and the UNHCR replied that there is not much they could do, and that was probably true. However, I had to wonder what the UNHCR can do for T. if he is in a Vietnamese prison. There is a need to thoroughly verify claims about the quality of the UNHCR's repatriation program, the same way we treat their claims about the screening program.

I would like to suggest that the State Department and the U.S. Congress look into the following three areas. First, despite claims to the contrary, the UNHCR has visited only 20 percent—now, they have revised it to 25 percent—of all returnees, and is therefore not in the position to say with certainty that no one among the remaining 80 percent is persecuted or mistreated or not.

Furthermore, the UNHCR does not monitor those who are forcibly repatriated. Case three, for instance, is not among those monitored by the UNHCR at all.

Second, the majority of the UNHCR monitoring staff are hired locally. In screening, locally hired staff is contributing to the problem of rampant corruption and other problems because of conflicts of interest. There are reasons to question the effectiveness and impartiality of locally-hired monitoring staff in Vietnam.

The European Community's reintegration program, by far the principal reintegration program under the CPA, has been hailed by some NGO's and the UNHCR as a resounding success. However, a Danish researcher hired by E.C. to evaluate its own program has reported serious mismanagement and declared it a big failure.

A State Department official came to the same conclusion, in private, of course, after his visit to Vietnam last year. The E.C. program was discontinued last November. In screening, the UNHCR has not been forthcoming in acknowledging the problems and in remedying the consequences, because they fear that such actions would have negative effects on repatriation.

I would think that the UNHCR, for the same reason, would be even less forthcoming in acknowledging problems in the repatriation program itself.

In summary, Vietnam has changed for the better, but its Communist regime remains repressive. There is a large number of asylum seekers in the camps who are at high risk of being persecuted if repatriated. They cannot return in safety, and will continue to resist repatriation to the end, even at a cost of more violence, bloodshed and losses of their own lives.

Sending these genuine refugees back to Vietnam is inconsistent with the principles of the CPA. Even among those with much less fear of persecution and who have returned, there are several incidents of mistreatment. Some of those incidents have been reported to the UNHCR and to the State Department. Claims that there is no such incident are simply not accurate. Thank you, Mr. Chairman.

[The prepared statement of Dr. Thang appears in the appendix.]

Mr. SMITH. Thank you very much, Dr. Thang.

I would like to now ask Mr. Claude Pepin, vice president of World Learning, if he would present his testimony.

STATEMENT OF MR. CLAUDE PEPIN, VICE PRESIDENT, WORLD LEARNING

Mr. PEPIN. Thank you, Mr. Chairman. Prior to my testimony, I would like to enter into the record on behalf of the Interaction CPA task force a document entitled Principles on the CPA and Indo-chinese Asylum Seekers. It is a consensus of 13 NGO's and PVO's working in repatriation and resettlement.

Mr. SMITH. Without objection, it will be included.

[The document appears in the appendix.]

Mr. PEPIN. Thank you. Chairman Smith and Chairman Bereuter are in absentia. I represent the Consortium, which is a collaboration of three longstanding private voluntary organizations, Save the Children U.S., based in Westport, Connecticut, World Education, based in Boston, Massachusetts and World Learning, formerly the Experiment in International Living, based in Brattleboro, Vermont.

I have been headquarters director of the Consortium since 1980 and have made numerous visits to the region and supervised our field directors in Vietnam, Lao People's Democratic Republic, Thailand and Cambodia, in our delivery of training and assistance programs for refugees and repatriates.

In our view, based on our 16 years in the field working toward a successful conclusion to the Indo-chinese refugee situation, U.S. legislation and policy must recognize the progress made under the CPA, acknowledge and address the flaws in its implementation and take into account the current realities, both in the camps and in the countries of origin.

The state of mind of those remaining in the camps and, equally important, those who have chosen voluntary repatriation, is critical in shaping policy and programs which will avert more violence and provide practical and realistic progress.

Our testimony will focus on two points. First, the Consortium's experience on the ground has shown that, although not perfect, repatriation is working for those who have chosen to return. We firmly believe that support for reintegration should not be linked to the resolution of issues related to the screening process.

Second, our testimony will give our perspective based on our experience and the implications of H.R. 1561 on those individuals who have chosen to return and on the principles of the CPA.

The Consortium was formed in 1979 in response to the Indo-chinese refugee crisis. Since that time, we have been delivering U.S. predeparture resettlement training in Thailand through February 1995, and in Indonesia through 1986. We have trained more than 240,000 refugees for resettlement.

Shortly following the implementation of the CPA, the Consortium began working in Vietnam and the Lao People's Democratic Republic, providing reintegration assistance to voluntary returnees.

In Cambodia, with UNICEF assistance, we provide education programs in three provinces. We have four to six expatriate staff in each country, many of whom speak the local language, and who have been on the ground working with repatriates, local government officials and local populations to provide development training programs which help repatriates and their families to reestablish themselves in their countries of origin.

Specifically in Vietnam, with Department of State funding, we are currently providing services to assist returnees to achieve employment through vocational training and group guaranteed lending programs, which capitalize individual businesses.

Since the program began in 1993, we have worked in nine provinces in the Mekong Delta, reaching over 29,000 beneficiaries composed of returnees and their families. In a survey conducted by the Consortium in Vietnam for our credit program, between April, 1994 and March, 1995, we have found that the average income per returnee household per month almost doubled as a result of the loans provided. The repayment rate for the loans was 98 percent.

Reintegration with assistance is working and can continue to be successful. The support for reintegration needs to not only be maintained but expanded to provide support to returnees in a broader geographic area. To that end, the consortium has initial signs from the Government of Vietnam that it would welcome our adding seven additional provinces, enabling us to reach individuals not only throughout the Delta, but also parts of the central region. Repatriation is a crucial element to any solution to the current situation and must be supported.

As I am sure many of you are aware from information we have provided for congressional delegations and other PVO and NGO visits, we have not experienced any cases of mistreatment or discrimination on the part of the Vietnamese Government toward any of the returnees with whom we have worked. Our staff has not been approached by returnees who have been screened out, indicating that they should have been screened in. That is not to say that such cases do not exist in the camps or in Vietnam, but we have not come across them directly.

Since 1993, we have had in place an expatriate staff member fluent in Vietnamese, who also worked for us in our program in the camp in Galang, Indonesia, where we worked for 15 years. He has had ample opportunity for individual contact with numerous returnees. He has not reported any cases of discrimination.

Our experience working in Galang during the screening process does not include direct involvement with screening. However, our staff at that time gave regular reports of abuses of power, which resulted in individuals whose cases might have been screened out, getting screened in.

As one of very few NGO's with expatriate staff living on Galang for extended periods, we did not hear of cases being screened out who should have been screened in. Again, that is not to say that no such cases exist, only that we did not hear of them. These statements regarding the screening process are not meant to draw conclusions, but rather to state the nature of our contact with those who have been through it.

In H.R. 1561, the legislation seeks to correct flaws in the screening process. However, we believe successful legislation will need to recognize broader factors related to reintegration. The current concept of a U.S.-led and supported and expanded Track II processing in Vietnam, which we understand is a concept supported by the UNHCR, may be the most viable solution at this time.

There are implementation issues which must be resolved prior to adopting the Track II option. However, these should not prevent

the establishment of sound policy direction. Just as flaws in the implementation of the screening do not cause us to reverse or undermine successful aspects of U.S. policy, nor should challenges in the implementing an expanded Track II prevent us from establishing policies which best reflect the U.S.' obligations, past commitments and current and future interest.

Currently, the Consortium is planning responses to the Vietnamese Government to expand operations further in order to provide services to more returnees in a broader geographic area. Supported reintegration programs for those who have chosen to return are an essential element of a humane conclusion to the era of Indochinese refugees.

Safe, monitored and supported return cannot be jeopardized by creating a policy which links efforts to correct perceived flaws in the screening process with the discontinuation of funding for reintegration. Reintegration support is critical to the many who will still return to Vietnam.

In order to achieve the original goals of the CPA, policies and programs must simultaneously consider in as humanitarian a way as possible: strategies for emptying the first-asylum camps in the region; procedures for correcting documented flaws in the screening process; continued protection and encouragement and increased support for those who have chosen to repatriate, as well as for those who will eventually return; continued progress in the bilateral and multilateral relations in the region; and the provision of clear policy guidance and programmatic linkages for the existing ODP program currently operating in Vietnam.

The provisions of H.R. 1561 that call for rescreening and a halt to U.S. support for reintegration assistance would be counterproductive to bringing about a viable overall solution. It would undermine progress which has been made in the successful repatriation to Vietnam, and the Lao People's Democratic Republic, as well, by removing protection and support to those who have chosen to return and further reducing the possibility of others making a similar choice.

It raises questions as to whether some of those who made the choice to repatriate under policies shaped and supported by the United States would attempt to leave again, or request that their cases be reopened.

As we enter the era of normalization, it could negatively impact on the U.S.'s ability to sustain bilateral relations in the region and may be interpreted by the Government of Vietnam that it is not acting in good faith in fulfilling its commitments to the fair treatment of returnees.

Although the majority of this testimony is based on current issues related to the Vietnamese, I would also like to comment on and distinguish those issues from the ones related to Highland refugees in Thailand and successful repatriation efforts in the Lao PDR. Highlanders in the camps in Thailand are refugees, as opposed to screened-out asylum seekers. The Royal Thai Government and the UNHCR provided opportunities for resettlement and repatriation, yet many have still refused to make either choice.

U.S. policy, with which the Consortium agrees, is to provide the option of supported choice for either repatriation or resettlement.

The repatriation program in the Lao PDR, which the Consortium has been implementing with the UNHCR, is progressing well, as in the case of Vietnam. Our Lao-speaking expatriate staff have not seen or heard of any acts of discrimination on the part of the Lao Government.

Similar to the Vietnam situation, it would be counterproductive for the United States to halt assistance, which provides reintegration support for those who choose to return. Thank you, Mr. Chairman. We hope this information based on our experiences is helpful and of assistance to the subcommittee.

[The prepared statement of Mr. Pepin appears in the appendix.]

Mr. SMITH. I thank you for your testimony, and again, the Inter-action memo that you provided will be made a part of the record.

Mr. PEPIN. Thank you.

Mr. SMITH. I would like to ask Mr. Lowman if he would conclude the testimony this afternoon.

STATEMENT OF MR. SHEP LOWMAN, DIRECTOR—REFUGEE AFFAIRS, U.S. CATHOLIC CONFERENCE

Mr. LOWMAN. Thank you very much, Mr. Chairman, for this opportunity to come before this committee and testify and discuss with you the important issue of how we go about bringing the Indochinese Refugee Program to an honorable and humane end.

Others have discussed today the details of the CPA, including some of the perceived deficiencies in the screening and the monitoring, and I agree that there have been significant deficiencies in the implementation of the CPA.

I would like to concentrate my remarks on the options that appear to me to be open to us at this time. I will summarize my written testimony, but before I begin, Lionel Rosenblatt, who was with us at the briefing the other day, is now in Tuzla, Bosnia, looking at that situation. He is unable to be with us. He has, however, prepared a brief statement for the committee, and if I may, I would like to submit that for the record.

Mr. SMITH. Without objection, it will be made part of the record.

[The prepared statement of Mr. Lowman appears in the appendix.]

Mr. LOWMAN. Thank you. First, I would just like to note the Indochinese refugee program has, in fact, for all of the uproar and concern these days, been a remarkable success. Over the last 20 years, it has been the largest refugee resettlement program in U.S. history, and over the last 20 years, we have brought over a million of our former friends and colleagues from Indochina to this country in safety and to establish a new life.

It has been a completely non-partisan effort. Whatever anybody thought about American involvement in the Vietnam War, we have been unified in our desire to assist our former friends and colleagues. Now, really all that remains is to find a way to end it properly.

Now, as you know, Mr. Chairman, in 1989, the CPA was agreed upon and a screening was established with the idea that eventually those found not to be refugees would have to go home. There has been a lot of discussion about screening here today, and I agree with many of the comments that have been made, but I would like

to talk about it from a different perspective, because I would like to talk a little bit about the standard that has been used in the screening and its interpretation and a couple of major problems that I believe that has caused for the United States in terms of the implementation of the CPA.

The standard that has been used is that found in the 1951 Geneva Convention, which, of course, provides refugee status to someone who is found to have a well founded fear of persecution upon return home. In other words, it is a test for future persecution or a fear of future persecution.

The way that has worked out in Southeast Asia and the CPA is that adjudicators in the countries of first asylum, who have been dealing with cases with politically sensitive backgrounds and very often concluded, and have often said to me, well, this fellow might have had a problem a few years back, but Vietnam has changed, so he is OK now. He has nothing further to fear.

Now, first of all, one can dispute in many cases rather strongly that factual judgment. But, let us put that aside for just a moment and look at the consequences of the approach. The consequences of the approach are that persons in categories, toward which the United States has long felt an obligation and a special concern in the management of this program for 20 years, have been screened out in the CPA screening.

Now, under the rules of the CPA, once a person is screened out, the United States has no further option on that case. You cannot go and say, I think he is a refugee. I want to resettle him. We have ceded our judgment on that issue to the adjudicators in the first-asylum countries. As a result, persons with years of service in the South Vietnamese military or civilian government, former Vietnamese employees of the U.S. Government, the U.S. Embassy, persons that are religious leaders or community leaders, persons who have suffered re-education, been banished to new economic zones, that type person, people from all those categories have been screened out, and they have been told, "You're not a refugee; go home."

And, in fact, people from many of these different categories have already been bundled up, forcibly put on an airplane and sent home from Hong Kong. Now, that was certainly not something that was contemplated in 1989. The CPA was sold to the NGO's on the idea that it would stop forcible repatriation, guarantee first asylum, no more push backs to sea, and the real refugees can come. We thought we were talking about a fairly generous system.

It never would have occurred to us at that time that people that fit in those categories would possibly ever be sent back by force to Vietnam, and quite frankly, I do not believe it occurred to the American delegation, either. I do not think that is what we foresaw, but that is the way the CPA works. That is the way it is working now.

Now, the second consequence of the use of this standard, which flows from the first, is that many of those persons who are now being asked to return home, believe on the basis of their own personal experience in the past, that they have great reason to fear such return. Now, we can debate the justification for that fear. We might even decide, well, they are wrong, they can go home safely.

But, there is no debate about the fear. The fear is there and the fear is real, and strong, and it is the basis for much of the violence and the resistance to return that we find in the camps.

That brings us to one of the main concerns of the NGO's at this time. For the past 2 years, we have been watching with growing alarm the gathering clash between governments and the refugees. The governments want those camps closed. Malaysia wants Sungei Besi Camp back to use it for the Asian Olympic games. Indonesia wants Galang Camp back because they already have bulldozers in there, building an economic development area. They want those camps back. Privileges are being withdrawn, markets closed, camp life is becoming increasingly prison-like, even though they are camps full of families.

What is the response of the refugees? They respond any way they can, demonstrations, petitions. They respond with self-destructive acts. They respond with hunger strikes, with self-mutilation and even with some suicides. Rational thought seems to go out the window on both sides.

We in the NGO community have watched this growing violence with great concern as we see ourselves coming to the end of the CPA, the declared end of the CPA. We see the refugee population going down to a core of hardcore resisters, and we see the danger of a serious and violent clash as never greater. This is for a population that the United States has had a special concern for for 20 years. It is a program that has had the full support of five presidents, and we look as if we are coming to this end.

We believe, Mr. Chairman, that time is growing very short, and the United States needs to act now to diffuse this issue before it is too late.

Now, all of us very much appreciate the efforts of this committee in attempting to address this issue through the CPA provisions of H.R. 1561. However, many of us believe that the best option would be an executive branch initiative, if such an initiative could effectively address the concerns and goals of this committee.

There are a number of reasons for preferring an executive branch initiative, but I suppose the principal one is timing. H.R. 1561 has a number of provisions which will be debated, including many that are other than the CPA. One does not know how long it is going to take to resolve those issues and an executive branch initiative can move quickly to diffuse the threat of violence in the camps and move toward a peaceful end to this program.

But, I stress, Mr. Chairman, that any executive branch initiative is going to have to be a serious one and seen by the people in the camps as agreed upon by both the Administration and the Congress. Otherwise, it is not going to work. The refugees are quite aware that they have influential friends in the Congress, and they will seek to hold on, unless they see that this is, in fact, the American initiative to come and try to help resolve this situation.

The other problem with H.R. 1561, though, is that I think there is a very serious question as to whether, as presently written, it could be implemented, since in my judgment, first-asylum host governments will not permit rescreening in their camps. If they refuse that, then really the only practical alternative would be to offer access to American immigration officials and a rescreening arranged

upon return to Vietnam. That, at the moment, would not be permissible within the language of H.R. 1561.

Now, I suppose that that could be addressed in conference, and failing an adequate Administration initiative, maybe that will be necessary. After listening to Mrs. Oakley's testimony today, it is my hope and it had been my understanding, that there was serious consideration being given by the Administration to a proposal similar to what we are putting forward, and I hope that will be successful.

Let me just very briefly lay out a sketch of the main points of such an initiative. We recommend a Presidential executive order that would establish categories of persons who have suffered past persecutions. I stress past persecution, which under U.S. legislation is sufficient. These categories are similar to the categories that have been given preference throughout the history of the program. They are categories that either establish former association with the United States by service to the Vietnamese Government or military or by direct service to the United States, other U.S. association, community leaders and religious leaders, or persons that have suffered particular types of persecution; for example, time in re-education camp; and not 3 years. The first years of re-education camp were the worst. The first year or two is when people were dying like flies. After 1 year in re-education, do not tell me that is not a person that has suffered from past persecution, and very serious past persecution.

We would then suggest that any person in the camps who requested it would be given an interview with a U.S. immigration official. That would not just be people in these categories, but any individual that believes they have a shot and they want to go and talk to a U.S. immigration official would be given an interview, a status adjudication interview.

Applicants would be interviewed, and those found to fit the specific categories would be presumed eligible, and would be resettled to the United States. If they do not fit the specific categories, they would be examined by U.S. Immigration on the basis of their general past history, and if found to have suffered past persecution, they would also be resettled to the United States.

Now, if these interviews take place in Vietnam, and it is my belief that that probably is going to be necessary, then arrangements have to be made with the Government of Vietnam to assure that this is a discrete process and an expeditious process. I would suggest that we not send people back by the thousands, that we send back a few hundred at a time. In a relatively short period of time, 8 to 10 days, they should be interviewed by U.S. Immigration and found eligible or not.

If they are eligible, we should process them out of there as quickly as possible. If they are not eligible and if they are rejected by U.S. Immigration, then they have to go to the reintegration camps maintained by the Vietnamese Government and be oriented and return home.

Now, this proposal has been under consideration within the community of interest on this issue for some time, and various questions have been raised. For example, are the asylum seekers in the camps so cynical and turned off by now that they would not even

accept the offer of an interview in Vietnam? Will the Vietnamese Government cooperate with this higher level of activity and screening in Vietnam? There are other questions as well, of course.

We think that positive answers can be given to those questions. We believe that, in fact, this is a proposal that will work and is doable, but of course, we will not know and cannot know, until a serious effort is made to implement it; to negotiate it and implement it. So, we cannot claim either perfection or certainty for our proposal, but we think it is the best option on the table at the moment.

Mr. Chairman, it is our best effort to contribute to a resolution of the increasingly threatening situation in Southeast Asia, and we thank you for the opportunity to present it today.

[The prepared statement of Mr. Lowman appears in the appendix.]

Mr. DAVIS. [presiding] Thank you very much. Chairman Smith has gone over to vote, and will be back in a couple of minutes. Let me make a couple of comments before I get into the questions. I want to start by thanking Chairman Bereuter and Chairman Smith for holding this important hearing and allowing me to sit in with their subcommittees to discuss the refugee situation in Southeast Asia.

I would also like to thank Chairman Gilman of the full International Relations Committee for his leadership in the area of refugee assistance. I wrote a letter to Chairman Gilman earlier this year requesting these hearings, and I appreciate the committee's willingness to address this difficult issue in a timely fashion.

Along with Congressmen Jim Moran and Frank Wolf, I represent an area in northern Virginia, which is the home to many thousands of Vietnamese refugees who have come to this country to seek freedom and security. Unfortunately, many of these new Virginians are separated from family and loved ones who remain in the refugee camps in Hong Kong or the Philippines and Southeast Asia.

I have received numerous reports from my constituents which provide credible evidence that these refugee camps are overwhelmed by corruption and mismanagement. I am concerned that corruption is tainting the refugee screening process conducted by the U.N. High Commissioner for Refugees, and funded by the United States. A completely fair and conscientious screening process is necessary to avoid the tragic consequences of repatriating genuine refugees back to Vietnam.

I look forward to asking you all some questions and I appreciate your testimony. I want to see if we can shed a little more light on this as we go through.

I have some general questions if I could start out, and I am sorry I was not here for everybody's testimony, but we wanted to get everything on the record. It will be printed in a binder and be part of the permanent record, and I will have a chance to read that then.

It has been suggested that even if we are unhappy with the results of the Comprehensive Plan of Action, the United States, after all, did agree to it, so an attempt to modify it or supplement it would be a violation of our international obligations. What do you all say about this? Do you agree with this?

Mr. LOWMAN. I think it is clear that we have a commitment to the CPA that has gone on since 1989, so we do have some obligations in that. That does not mean that we should ignore our responsibilities to press for an appropriate implementation of that agreement. If we become aware of serious deficiencies, our State Department should be very forward in dealing with CPA partners and the UNHCR to assure they are corrected.

I might add briefly with respect to the proposal which I have just discussed, we do not think, in fact, that that interferes at all with U.S. responsibilities under the CPA, because it is a follow-on activity. And, it is so recognized by the UNHCR and, I think from Mrs. Oakley's testimony, probably also so recognized by the State Department at this point.

So, that proposal does not in any way interfere. But, with respect to the CPA itself, the State Department should be very forward about pressing for proper implementation. Being a member of the CPA, signing on to the CPA, does not mean that we stand back and let it be implemented in any way that anybody wants to implement it.

Ms. BAKER. Could I just have one word on the CPA?

Mr. DAVIS. Sure.

Ms. BAKER. From a legal point of view, it is not a treaty. It was an international agreement. It is not set in stone. It was a response to a situation. Situations do not stay the same. The CPA is 6 years old now, and there could not be any complaint about the signatories to the CPA sitting down and discussing how to change it, to make it more useful at this stage.

Mr. DAVIS. Let me ask this. Have the other nations and organizations observed their obligations under the CPA?

Ms. BAKER. Unfortunately, all too closely. In the matter of family reunion, unless you get refugee status, you do not get family reunion, if you are found not to be a refugee, and all of them have observed that, sadly.

Apart from that, yes, everyone has, all the resettlement countries have taken refugees. All the first-asylum countries have maintained first asylum up until the 14th of February last year. As far as repatriation goes, certainly Hong Kong has been having a go, unfortunately, at repatriation, and the other countries have been trying to persuade people to go back voluntarily.

Yes, I think the CPA has had its successes. Screening was not one of them.

Mr. WOLF. Just for the record, Congressman Davis, I believe that early on, Malaysia was pushing people back and basically denied first asylum as of what, 1991?

Mr. LOWMAN. I spent 5 days in Galang Camp in 1991, interviewing boat crews that had been pushed off from Malaysia. Despite the fact that the Foreign Minister of Malaysia chaired the CPA conference, Malaysia was pushing boats off before the conference and continued to push boats off for several years after the conference.

Mr. DAVIS. In what countries would you say is there real solid evidence of corruption in the screening process? Do you think there are just a few corrupt screeners, or do you think it is more widespread?

Dr. THANG. We have done a rather intensive investigation on corruption in Indonesia and the Philippines, and we can say with confidence that virtually all screening officials in those two countries are involved in corruption, including extortion of money and sexual favors.

We have started looking into other countries in the region like Thailand and Malaysia. We have found quite a significant amount of evidences of corruption in those two countries, as well. And, one point I would like to bring forth is that a number of UNHCR officials, including lawyers in charge of overseeing the screening process in those countries, have also been involved and implicated in that corruption racket.

Very recently, the UNHCR has conducted its internal investigation, and has admitted that corruption has been a problem.

Now, when Mrs. Oakley testified, she did mention that reports of corruption were only recently brought to her attention or the UNHCR's attention; that is not totally correct. We have tried to approach the UNHCR several times since early last year, and we did not get anywhere.

We have also raised the issue to the State Department since last year, and they have come out and persuaded us that if there had been any problem with corruption, they had been corrected. That is clearly not the case.

Mr. DAVIS. Would you say the corruption resulted only in non-refugees being screened in, or did it sometimes result in genuine refugees being screened out?

Dr. THANG. It would be very hard to believe that the screening officials suddenly become clean when they are presented with a genuine refugee case. I do not think that suddenly people like that would become so virtuous.

Not only is that just speculation. We have intercepted some documents from the UNHCR that mention cases of genuine refugees who have been wrongly screened out because they could not pay.

Mr. DAVIS. I yield back to Mr. Smith.

Mr. SMITH. [presiding] Thank you, Mr. Davis, for assuming the chair, and I just have a couple of remaining questions I would like to ask.

Mr. Horst, just generally, how would you describe the human rights situation in Vietnam?

Mr. HORST. I am not sure it would be appropriate for me to try to take a tack at that, because I am not a human rights expert. I would say that there are a couple of important things happening at the moment. One of them is the establishment of the an official dialog between Vietnam and the United States on human rights. I believe that dialog will illuminate a lot of things.

I also know that international human rights organizations, some of which are represented here today, have devoted a great deal of effort over the last years to attempting to document and understand their concerns. I believe that their documentation and their efforts merit the inspection of people who are wanting to specialize on that issue.

I will say this. When Ambassador Bangh spoke at an Asia Foundation event last week and spoke of the positive aspects of the new normal relationship and the possible impediments of the new nor-

mal relationship, one thing he mentioned specifically under the category of possible impediments is human rights. I understood him by that to be saying that the Vietnamese Government, perhaps, has some irreducible minimums or some fundamental premises which cannot be changed, and that human rights is one of them.

Mr. SMITH. But, that is precisely what this hearing is all about, people who fled because of human rights problems and people who because of in our view—my view, and the view of many others—because of a flawed screening process and other problems, are poised to go back to an unacceptable situation because in your testimony, if I heard it correctly, we are looking for an acceptable and appropriate way to end the CPA.

If I took the gist of your testimony accurately, it said that among the people with whom you have dealt, there has not been repression, there has not been retaliation of the people, the clientele that you have had access to. Is that correct?

Mr. HORST. That is correct. Specifically, when one is talking about persecution, prosecution, mistreatment, harassment, whatever of people after return, you ultimately have to come down to the question of criteria. The basic criteria are those undertakings, commitments that the Vietnamese Government made under the CPA. Those things I mentioned specifically in my testimony. Non-prosecution for the criminal offense of departure, re-registration of legal residence and things like that.

It is on those things, those specific criteria, fundamental criteria, that monitoring has been, and continues to be, hung, to be focused. Beyond that, the kind of interventions that I refer to in making the term "intervene-related monitoring", that refers to the ability of UNHCR monitors and sometimes even of others, of NGO officials, to come upon a situation where there is a confusion or a difficulty or a misunderstanding between a returnee and someone in the community—an official, a neighbor, a relative, or whatever.

As an expatriate representing part of the mechanism which is facilitating the reintegration of returnees to undertake some kind of intervention, to assist or resolve that kind of difficulty, I would say again that the monitoring of UNHCR, at least as I was part of it through the end of 1993 for the southern half of the country, was intervention-related. On the basis of that, I say with confidence, it was successful.

Mr. SMITH. Did any of the returnees protest to you that they were refugees?

Mr. HORST. I met a number of people who said they felt they were inappropriately screened out. I met people who had screening decisions in hand and had a resettlement offer in hand, but who, mainly for family reasons, made the decision to go back to Vietnam.

I did not encounter anyone who was refusing to make a go of their reintegration because they felt they had been inappropriately screened out or had not gotten an appropriate screen decision.

But, again, our monitoring in UNHCR through the end of 1993, at least, was focused on voluntary returnees, people who made volitional choice to go back home.

Mr. SMITH. Just to be very clear on this, those who had been forcibly repatriated, you have no personal contact with?

Mr. HORST. There is a mixed record on the part of UNHCR, because at least in 1992 and 1993, the UNHCR mission in Hong Kong was saying formally in printed public statements, that UNHCR monitors all forcibly returned repatriates, as well as regular voluntary repatriation cases.

In fact, our practice on the ground in the southern half of the country, again, through the end of 1993, was not to visit these cases unless we had a specific request from the British Embassy, from a journalist, a human rights advocate, from someone to make a visit. We did visit them. I have done that personally. But, it was also the demographics of the thing, having in southern Vietnam at that point, 20,000 voluntary repatriation cases, versus 150 or 200 mandatory repatriation cases.

Mr. SMITH. In your judgment, do those people—and you have heard much testimony today and I am sure you have done a great deal of reading and work on this over the years—the people that many of us believe have been improperly screened out—and even Interaction makes a very good case in this consensus document that solutions are needed which address wrongly screened out cases and promote a peaceable solution to the situation—do those people who are now resisting, believing that they are going back to a very difficult situation, do you believe that they have a reasonable case for rescreening?

Mr. HORST. It is hard for me to say without looking at the specifics of a case, the specific criteria.

Mr. SMITH. Based on what you heard today, because there was some very compelling testimony by many of our witnesses, who are very knowledgeable people.

Mr. HORST. I believe the proposal, which has been outlined by Shep Lowman, is a reasonable and appropriate approach to revisiting or rescreening those people who are identified by some criteria, by someone as having been wrongly screened out. We would support that proposal.

Mr. SMITH. Again, part of the problem has been, the very people that have been vested with this very important trust, we are suggesting betrayed that trust by improperly screening these people. That is why I myself and a majority of the Members of the House of Representatives voted the way we did.

I think as this story comes out over the years, it will be seen as more of a scandal rather than less, particularly in these waning months when those who probably have the strongest cases, and have resisted the most, are now at the bottom, and the international community and the Clinton administration want to just close the chapter on this and say, send them all back.

Mr. HORST. In terms of there being a betrayal of trust by those charged with the task, I think you have to recognize what one of the witnesses, I think Pam, said earlier today, that the screening ultimately in each asylum country was the purview of that asylum country government. The UNHCR had varying roles in respect to that asylum country—

Mr. SMITH. Well, an aggressive use of the mandate authority, I would submit, and raising red flags at the appropriate times—you know the Lawyers' Committee report was not issued this year or last year. It was issued back in 1992.

Many of us have raised these questions with the Administration quietly, sometimes in open hearings, in the hopes that they would fix it: that they would be compelled by a compassionate look and an honest look at the facts and fix it; assert themselves, you know, with aggressive leadership, which seems to have been lacking.

Mr. HORST. In that respect, I would have no information or opinions which differ from or contradict the testimony presented here today.

Mr. SMITH. You know, I asked you the questions about human rights for a very specific reason. I chaired a hearing—everyone left when we had a hearing on the famine in Ethiopia back in the 1980's, and as a Republican, I had the rare privilege of chairing a hearing when we were the minority party.

I asked all of the NGO's that were there to describe or to give their expert opinion whether or not Mangistu was using food as a weapon against the people from Eritrea and others. There were very, very widespread allegations that he was doing that, and U.S. law would be triggered in such a way that would require a response.

And, one by one, very responsible NGO's begged off and said, we did not want to say anything, we do not want to say anything out of fear of offending the host country. You surely have a personal opinion on the human rights situation in Vietnam, and World Vision—my wife and I have been sponsors of a child since 1978 by way of World Vision, so I am very strongly supportive of what you do as an organization. But, when organizations lend their extensive credibility to a line of thought that suggests that people had not been harassed or hurt or even perhaps put into prison or worse, who have been repatriated—on the floor of the House, some of the groups that I have great affinity for and concern for and support financially, both by way of the work I do with child survival and a lot of other things and my personal contributions, were being cited as saying, there is no problem with the repatriation.

David Obey stood on the floor and said, Save the Children says, there is no problem with the repatriation. Now, that has a real ring to it, and it causes me to say, really? That is why we need to know what the parameters are that you operate under, with all due respect, when you say and testify the way you have, and World Vision lends its credibility. Yes, you want to work in-country and do a good job on behalf of the suffering. But, we think that this is a flawed situation.

I raise that because not a single NGO would say one bad thing about the regime in Ethiopia, where now the human rights abuses are chronicled and they are legion. In Vietnam, our own Country Reports and the other human rights activist organizations say the same thing. If one of these people go back, who wants to practice his or her Catholicism in a way that does not fit into the strict parameters of the Vietnamese Government, or dissents from the government, and that is why they left in the first place even if they spent time in the re-education camp, perhaps 2 years, 11 months and 25 days, not the 3-year minimum, they are sent back. Will they experience retaliation of any kind if they repeat that, dissent from the government, make a comment that the Communist Gov-

ernment needs change or reform? Where do they stand, persons like that?

Mr. HORST. Mr. Chairman, what I have tried to describe to you in my testimony and responses to your questions is essentially an insider's view, a technical view, where my work for the last 4 years in Vietnam, 2 with UNHCR and 2 with World Vision International, has been being part of the responsibility for ensuring the compliance of Vietnam with its commitments, for assuring the compliance of UNHCR for that matter, with its commitments to provide reintegration assistance, and to carry out and to facilitate through integration projects the quick and early return to a normal lifestyle of people who have come back to their home after many years of absence.

I would not want you to misconstrue anything I have said as a begging off of a question or as an endorsement of a particular position. Human rights is, in the context of Vietnam, a fairly opaque matter, and I refer to the bilateral dialog between the two governments and to the work done by international human rights organizations, specifically because those are a few of the windows that we have through the opacity.

Another thing that I would recommend to folks who want to take a real serious view at this is the fibus, because the fibus gives, in real time, translations of official Vietnamese Government publications, newspapers, radio statements. Those describe in very frank terms what the limitations are, what the parameters are and what the constraints are.

I would say that the fact that somebody is a returnee rather than being something that opens them to persecution is, in fact, their protection from persecution. Their status as a returnee under the CPA and the protections that come with that are their protection from the kind of scenarios that we are all concerned about.

Mr. SMITH. Before I ask the other panelists to respond to that assertion, that somehow the CPA confers protected status on someone who might dissent or have a view contrary to the government, I would ask them to respond, but let me say, can you state an opinion one way or the other whether that person that I described, the Catholic or the person who may be critical of the government, would be safe going back to Vietnam, especially if they expressed those views in the camp? I think there is a growing documentation being established that the Vietnamese Government knows what goes on in the camps and who is speaking out against the government.

Can you say that person would be safe?

Mr. HORST. In my experience, the person like that, who on the eve of return or on the eve of a decision to return has real concerns about what they will face when they go back to Vietnam, my experience is that they will express these concerns to a UNHCR representative in the camp, in the country of first asylum. Those concerns, on a case-specific basis, would be communicated to the UNHCR office in Vietnam in advance of the person's return, with the simple statement, this person has requested early monitoring, because of concerns or uncertainties they have about what they will face.

At least again, through the end of 1993, in the southern half of the country, in such cases, UNHCR was conscientiously responsive to the request for early monitoring in an attempt to register for such persons an early and effective presence of the international community's monitoring facility as a means of providing assurance to them, and as a means of providing assurance to those around them in the community that their status was recognized.

Mr. SMITH. Is that speculation, or do you know that that happens?

Mr. HORST. That is my experience.

Mr. SMITH. You know of cases?

Mr. HORST. Yes, I participated—

Mr. SMITH. How quickly was the monitoring provided from the point when those expressions were made to a UNHCR person and they were sent back to the country?

Mr. HORST. I think it would depend on the location to which the person is returned. It would also depend on how much notice we have via the flight manifest of the actual date on which they are returning.

But, in such a case through the end of 1993, at least, it was very easy for us to reach them within a period of 2 to 4 weeks. Very easy.

Mr. SMITH. Is that an ongoing monitoring, or just a one-shot deal?

Mr. HORST. That would be determined by the outcome of the first finding, and by the concerns or the lack of concerns expressed by the returnee. If there was ever a situation where I had some doubt, where I thought the person was showing real discomfort, I would give them my card, write my home phone number on it, and tell them that if they do not want to come to the office, or they do not want to make a phone call or write a letter, to call me at home. Only in one case did a person ever take advantage of that offer.

Mr. SMITH. I will ask the other members of the panel—Mr. Wolf, do you want to jump in?

Mr. WOLF. I would just make one comment on—

Mr. SMITH. On the CPA protection issue?

Mr. WOLF. One comment on this point. Congressman, you have drawn the example of a political or religious dissident who, while they were in Vietnam, suffered persecution, imprisonment for an expression of their political views, and then fled to Hong Kong or another first-asylum camp.

Now, it seems to me in that situation, when the person is a political dissident who is in Vietnam and cannot express his views without being imprisoned, and when somebody who returns to Vietnam is then placed in a position in which, if they are to express the same views that they expressed at the same time that they fled, it seems to me that in that type of circumstance, that person should be recognized as a refugee at the time they were overseas, and should not need, when they go back to Vietnam, to keep their mouth shut in order to avoid persecution. That is just not the type of choice that the refugee laws require that people make.

It may be that they are in a somewhat better protected status or it may be that they are not as a result of their flight to the camp. But, the fact is, that type of person should not be forced to

return to Vietnam, and that is the simple point about that issue, I think.

Mr. SMITH. Does anyone else have anything on that issue? Dr. Thang.

Dr. THANG. Yes, I would like to comment on that point regarding protection. It seems to me that there has been an exercise of trying to extrapolate from the experience, based on the group of 73,000 returnees, that is, to the group of at-risk people who are still in the camps. These people have not returned. Most of them, virtually all of them, have not returned. So it is very hard to extrapolate, and I do not think that any kind of extrapolation could be without error. It would be in error.

Second, I would think that it would be unfair to expect NGO's to play the role of monitors. They have their primary mandates of providing services to returnees in Vietnam and therefore, their presence in Vietnam is very crucial and so are their sources of funding from the UNHCR.

We should not require them to jeopardize their position by standing up and criticizing or bringing forth cases that have come to their attention, publicly. That is exactly the same situation in the camps regarding screening. There have been several dozen of NGO's working in the camps in the region for about 6 or 7 years, and yet, there is not even one which has come out publicly to report on corruption in screening, which is a fairly rampant phenomenon in the camps, known to almost all camp workers and people in the camps, and to even people who are not in the camps.

I do not think that they are to blame, because they are playing their role. But, it would be unfair if we wanted to rely on them to report on corruption in screening, or to rely on them to monitor the quality of screening procedures. They are not equipped, they are not trained, and they are not in a position to do that, and especially because of conflicts of interest, they are not supposed to do that. Thank you.

Mr. SMITH. Yes, Mr. Pepin.

Mr. PEPIN. Relative to that point, I would say that we do have an obligation, if we saw patterns of discrimination, to come forward. NGO's do not have, in my opinion, a conflict of interest, the true conflict of interest that puts this kind of pattern of discrimination over and above any particular service program.

Our experience would coincide with Mr. Horst in terms of in the Delta region, we found that there were monitors who came in those cases, within 2 to 4 weeks. That is consistent with our experience.

Mr. SMITH. If they had questions about corruption, to whom would they make a complaint, and what has been the specific experience of complaints made and action taken?

Mr. PEPIN. In our testimony, we stated we do not have direct experience with people claiming corruption. When we were in Galang, we heard verbally that there were incidences of corruptions and abuses of power. Those were verbally reported to UNHCR at that time, but they were commonly known among staff at the camp at that time.

Mr. SMITH. Considered to be true?

Mr. PEPIN. They were undocumented.

Mr. SMITH. What did UNHCR do to investigate those?

Mr. PEPIN. Once we passed those cases along or passed on verbally that information, we stepped back and allowed UNHCR to take the task from there. I personally do not have direct experience with the specific steps that UNHCR took in those cases.

Mr. SMITH. We will ask UNHCR that, too, but I mean, that has been the problem, that the ball stopped there, or the buck stopped there, and then what was done with it?

Mr. PEPIN. If I may add, Mr. Chairman, I think there is also an issue of connecting, as was stated in our testimony, the linkage between supporting reintegration and maintaining support for the 73,000 people who have voluntarily returned, with screening. We should not confuse the policy of dealing with the screening process and the flaws in the screening process with maintaining support for those people, because that support is essential to maintaining whatever protection there is available and establishing them successfully in their lives as they return. Because, many of the people still remaining in camps may not get to resettle anywhere, and they, too, will need support, and more support in our opinion.

Mr. SMITH. When somebody is actually back in-country, how do they come forward if they have a complaint in a confidential way, without the government knowing about it, to express concern about their welfare? Is that possible?

Mr. PEPIN. Our experience with our fluent Vietnamese-speaking staff who have numerous occasions to meet with returnees, is independent of any government contact.

Mr. SMITH. Is that part of the UNHCR, or is that just part of an outreach by the NGO?

Mr. PEPIN. That is part of our loan programs and vocational training programs. In fact, we have hired returnees from Galang, that we know well.

Mr. SMITH. Were any of them forced to repatriate?

Mr. PEPIN. No. The majority of everyone we have dealt with has been voluntarily repatriated. So, in those cases, we have never had anybody come to us and make complaints that have been reported to our staff.

Mr. SMITH. Let me ask you, and it is a sensitive question and if you choose not to answer, I will understand, but if, for example, Mr. Horst, you were to criticize the Government of Vietnam for its human rights abuses, would that put your continued activity in that country at risk?

Mr. HORST. It is a speculative question. I could not know how to answer it.

Mr. SMITH. Do you have a personal opinion on the human rights situation in Vietnam?

Mr. HORST. I think I have a personal opinion on almost everything that has to do with Vietnam.

Mr. SMITH. But, you would rather not share it?

Mr. HORST. I do not think it is relevant to the conversation here.

Mr. SMITH. I think it is entirely relevant. It is part of the problem in providing what I consider to be a whitewash of the screening process that was flawed. Many of those who oppose what the Congress has done and what I personally have done, have turned to organizations for which I have tremendous respect, such as, say,

World Vision, and Save the Children, and they say it is OK, so it must be.

Yet, when asked directly to respond to the issue at point, the egregious, ongoing pervasive human rights abuses of a dictatorship in Vietnam, you fail to answer. I want that on the record, so that when people tell me that World Vision and other organizations that I deeply respect are providing a kind of cover—and it is not unlike, perhaps, another organization I like. The Red Cross does not take positions, but they also do not provide that kind of cover, I do not think, at least in a situation like this.

It is something that deeply troubles me, believe me. It is being recited by people that I disagree with on this issue, and also have respect for, who will immediately turn to NGO's and say, they do not find a problem.

Mr. HORST. If I could, Mr. Chairman, I do not think that is a totally accurate representation of what is being said here today. I think all of the NGO's working in Vietnam, none of us are saying, this is the condition of human rights in Vietnam.

What we are saying is, we have been part of a technical and very longstanding intensive issue, which is the resettlement of boat people, culminating after 20 years and the repatriation and reintegration of most of those boat people.

If there were a policy, if there were a practice, or any systemic evidence of persecution or harassment or returnees, with 73,000 people back, we would know it by now. We would definitely know it by now.

Mr. SMITH. You would be speaking forcefully about it right now?

Mr. HORST. Absolutely. I believe UNHCR would, as well.

Mr. SMITH. In terms of those forcibly repatriated, do you know anything about them?

Mr. HORST. I am sorry, Mr. Chairman?

Mr. SMITH. Those who have been forcibly repatriated, do you know anything about them?

Mr. HORST. Again, I have very limited experience, having only visited a few cases several years ago at special request. Under my watch at UNHCR, we did not monitor forcibly returned people.

Mr. SMITH. When did your watch end?

Mr. HORST. The end of 1993.

Mr. SMITH. Those who are still on the ground now, what has been their experience feeding into you and others that are part of World Vision?

Mr. HORST. It would be tough for me to represent that, because although I do have—

Mr. SMITH. Well, I will make a request if that could be made a part of the record, I would make it a part of the record. I would like to know what World Vision's experience is now, especially as it relates to those who have been forcibly repatriated.

Mr. HORST. I think in the communities in the three provinces where World Vision is carrying out reintegration projects, there are no forcibly returned repatriates that I know of. And, in those communities where we work, our expatriate staff deal with the whole community of returnees, which could be dozens or hundreds of people. We do them without the presence of any government official, unless we request it or find it necessary.

I would also say, going back a few years to my time with UNHCR, it is not necessarily correct to assume that the presence of a local official will impair or discourage a returnee from speaking their mind. My experience is, if anything, that sometimes serves to inflame or encourage them to speak out even more; specifically, if they perceive that that local official is part of the problem, part of the difficulty that they believe they are experiencing.

Again, there are a variety of means available for any returnee who wishes to contact UNHCR, a human rights organization, an NGO available to them, as noted in my prepared statement.

Mr. SMITH. Let me just ask you, is it true that upon repatriation to Vietnam, asylum seekers have been subjected to lengthy interrogations in which they have been asked, among other things, to explain in detail political activities in which they were involved before their departure, and also any anti-Communist activities in the refugee camps?

Mr. HORST. The testimony that Dr. Thang gave in that regard matches my own experience. I only have probably seen a half dozen or a dozen cases like that. These were mainly people who served in some profile in the camp, working with an NGO, working with the human rights organization. But, I have also heard stories directly from returnees similar to those Dr. Thang gave in his testimony.

Mr. SMITH. Is that the experience of the other panelists, as well, that it is rare or something that is done frequently?

Ms. BAKER. I have certainly come across cases like that, people who have gone back and have written. I would just like to say through the chair to Mr. Horst, what would be the use of having given somebody one's visiting card if they were in a re-education camp or a prison? It hardly seems sufficient for monitoring someone who feels they may be in danger.

Mr. HORST. I am not sure that I get the point, but in those cases where a returnee has been in detention or in prison and attempting to contact UNHCR, in my experience, their families did it on behalf of them.

Ms. BAKER. Right.

Mr. SMITH. The hearing is almost over. I would just ask a couple of final questions and then ask Mr. Davis if he has any questions, and I hope he does.

Over a year ago, human rights groups in the United States brought 535 egregious cases to the State Department, and I understand the State brought only 48 to the UNHCR, which only reversed two cases.

Can any of you explain why or give any insights as to why the Department of State only brought the 48 cases, and why UNHCR had such a small number of cases they found worthy?

Mr. WOLF. Chairman Smith, I was intimately involved in that process. The only rationale that Interaction was given from the Department of State was that the cases that we had presented to them were weak. Among the weak cases that the Department of State had referred or had considered weak was, for instance, the case of the person I had mentioned earlier, who had burned the Communist flag.

There were other cases that were equally astonishing in my view, that the Department of State considered weak, because I am fairly certain the Department of State did not have any information that we provided. We had given them, in some cases, one case involving somebody who was in an NEZ or a new economic zone—a Vietnamese gulag—for 12 years.

We had given them another case that involved a political and religious dissident who was forced to flee Vietnam after the regime had cracked down on the anti-Communist organization in which he was involved and arrested many of its members. So, I do not know why the Department of State took the position that they did.

I can tell you in that one case, I asked the Department official why that dissident's case had been rejected, and he told me well, in his view, any problems that this political dissident would face upon returning to Vietnam, would be, and this is almost his language in sum and substance, would be of his own making, since such problems would only result from his insistence on resuming his political activities once he went there.

I am afraid that is the attitude that reflects what has been going on through the screening process, as well.

Dr. THANG. May I add to this? I was also very deeply involved in some selection of cases for submission to the State Department. As a matter of fact, I think that about 95 to 98 percent of all the cases that you just mentioned had come from the two organizations that I had been affiliated with.

Those cases came in many batches. In the first batch of tough cases, I intentionally included two special cases, just to test the system, and those two cases involved—well, one case involved a Buddhist monk. Both cases are very special, because they had been granted mandate refugee status by the UNHCR. The State Department did not know that, and the decisions had not been released.

Those two cases were not selected among the 48 cases that the State Department submitted for the UNHCR review. When I asked the State Department official who was in charge of the selection of those 48 cases why those two cases had not been selected, he replied that this Buddhist monk would be OK in Vietnam if he keeps a low profile, if he does not do anything against the government's policy.

That might be true, because in any regime, even the most despotic regime, collaborators and those who go along with the system, might be doing OK and some might even prosper. But, that is very much against the spirit of refugee laws and refugee protection. That would mean that this Buddhist monk will have to renounce his church, which has been banned, outlawed by the government, that this Buddhist monk will only be able to teach Buddhism according to the version approved by the government, and that this Buddhist monk might very well have to inform on his fellow Buddhist monks, which he had refused in the first place.

I believe that there has been no clear criteria. Although I do not want to question the intention of the State Department, I feel we have to question their judgment in the selection of those cases.

Mr. SMITH. Mr. Lowman.

Mr. LOWMAN. Yes, I would just add that I think a lot of what has gone on in the interaction between the NGO's and the UNHCR

and the State Department has been essentially a bureaucracy circling its wagons when its professional judgment is challenged. Very often, the answers that we get are that the case lacks credibility and in general, the case lacks credibility because the existing file does not match the new information of a new claim.

However, I believe in very few cases, if any, is this discrepancy investigated, that is, to say the original file, often put together by an untrained interrogator with an untrained interpreter, that is the Bible. Anything that anybody comes along with later, if it is not in there, well, then that is a claim that lacks credibility. I think that has been the death of many, many of the claims that we have put forward and cases we have put forward.

Mr. SMITH. I thank you. Just let me ask Mr. Horst one final question. In your interviews when you were with UNHCR and maybe you could speak for your colleagues that do this, as well—are there any instances where government officials or anybody related to the Government of Vietnam is there? I know you speak, I think, fluent Vietnamese, but I mean cases where there is any kind of contact? They are in proximity to the person that is talking, or perhaps drivers? Are they involved in this process, at all?

Mr. HORST. In my experience, it depends on the personality of the particular monitoring officer, in large part. Generally, when you go to a locale, a district, for the first time, you are going to have probably a half dozen people with you. You will have with you your own national staff assistant, interpreter, who is a UNHCR employee, who works in the UNHCR office and who is selected by the monitoring officer and travels with them.

Mr. SMITH. With government approval? Is the Government of Vietnam involved at all with the hiring? Do they have to give the nod for any of these people to secure their employment?

Mr. HORST. The Government of Vietnam at the present point in time must authorize or endorse the hiring of all Vietnamese nationals who work for foreign organizations or companies.

This does not take away the right of those companies or entities to recruit, but it simply means that the recruitment must be endorsed at some point by the appropriate part of the system, which is different for a U.N. agency than it is for a multi-national corporation.

But, in coming to a district for the first time, you usually accumulate someone from the district, and then you go to the village. You accumulate someone from the village.

My experience is, after a half a day or so of seeing you sit in the house and ask the same questions to people over and over and over, people get bored. They go outside and they smoke and they talk or they drink tea or something.

It also depends on the predilection of that monitoring officer. Some people like to work eight to five, and when you work eight to five and you only want to visit cases in the city, then it is really easy for people to tag along. One of the enjoyable and challenging parts for me was to try to visit the most remote cases. In those cases, people do not want to go. Even the local officials do not want to go, and often you have to insist. Listen, I will see this case before I go back to Ho Chi Minh City, and then reluctantly do they get in the boat and take the walk with you.

That really is determined more than anything by how the individual monitoring officer who is an expatriate U.N. employee, handles himself.

Mr. SMITH. But, the answer is yes that the government presumably could know exactly what went on in the conversation between yourself and—

Mr. HORST. Oh, certainly, if for no other reason than there are probably 50 to 100 neighbors crowding around the home.

Mr. SMITH. I am talking about part of the official framework that has been established for this monitoring system, this pristine monitoring system that is in place. As a component of that, is somebody from the government there, on the spot, with you and your colleagues who are actually conducting the interviews?

Mr. HORST. The only part of the bureaucracy that we are compelled or were compelled to comply with was to provide several days' notice about which province and which district we intended to go to. We were not compelled to provide the names or addresses of individual returnees to whom we wish to visit.

Mr. SMITH. But, once you were at that particular address and meeting with that person, you would have somebody from the government, not absolutely always, but you—

Mr. HORST. In practice that was not at all uncommon.

Mr. SMITH. You would have somebody there?

Mr. HORST. Correct.

Mr. SMITH. From the government?

Mr. HORST. Not at all uncommon.

Mr. SMITH. How is the confidentiality of someone who says, you know, they have threatened me or they have done this or that, how do you protect that with this rather porous process?

Mr. HORST. It is a porous process and we protect it with an intervention. You said in your opening comments something to the effect that there is no remedy to mistreatment or harassment. I think there is a remedy, when monitoring is intervention-related. That means, when you are in a situation where there is clearly some problem which is making the individual returnee uncomfortable, you try to find a way to get them to express what that problem is.

Once they have expressed that to the best of their ability, you make the appropriate intervention, with the village people's committee or with the district labor department or provincial labor department, or in the serious case, with the Ministry of Labor.

I want to say this, as well. When the CPA was hatched in 1989, Vietnam's relations with the rest of the world were much different than they are now. There was no talk of joining an ASEAN. The Vietnamese Army was still in Cambodia. The embargo was 5 years from being lifted. Normalization with the United States was 6 years away, and their view, rightly so, of the CPA and of compliance with it, was one of the CPA being one of the sole means by which the international community was going to make judgments about Vietnam's earnestness and commitment to joining the international community after many years of isolation.

Now, that reality has been overtaken by events of the last 5 or 6 years. But, what remains is the fact that it is contrary to the in-

terests of all levels of Vietnamese officialdom to cause or perpetrate difficulties for returnees.

The only certain results of that will be two things. If an intervention is made, there will be a reaction. It will be a negative one from a superior level of Vietnamese officialdom, where the intervention was made.

In a worse case, it could, to some degree, endanger the reintegration assistance coming to that community or coming to that village.

Mr. SMITH. How many interventions did you make?

Mr. HORST. Well, let me see. I would say I probably visited 2,000 returnees, and made an intervention in maybe 200 of the cases, 100 of the cases, less than 10 percent.

Mr. SMITH. What is the followup like for the person who has your job now for those 200 that have been—time is on the side of those who repress. Once you are out of town, once you are gone, here in Washington, what is the followup mechanism to ensure there is not a postponement of the retaliation?

Mr. HORST. I think it would, again, turn on the particular difficulty or condition being addressed. If an informal conversation with local officials seemed to be enough, then I would assume the problem was over until I heard otherwise.

If it seemed something more serious, I would ensure the person was visited again after 3 months or 6 months or a year. In a situation where it seemed that the local officials were not in a position to be able to resolve the difficulty, whatever that was, we did not hesitate to make contact directly with the Ministry officials based in southern Vietnam, who were responsible for the success of the repatriation and reintegration program.

But, again, a great deal of the onus remains upon the individual monitoring officer, and their desire to pursue things.

Mr. SMITH. Let me just ask you one final question. Do you have any reason to believe that those support personnel—again, hired with the full agreement with the Government of Vietnam—would it be your professional opinion that they report to some source within the government, whether it be the Minister of Interior or some other Ministry about the goings on?

Mr. HORST. I think the realities have changed on that quickly. But, my own experience over the last 4 years is two-fold. First of all, even now with all the openness and all the investment in Vietnam, all the tourism, nothing that any expatriate citizen, any foreign national does in Vietnam is confidential, whether it is personal or professional.

Second, I am certain that at least in the early days of the UNHCR program, these national staff whom we selected and whom we took with us only if we had personal confidence in them, were required as Vietnamese nationals to make reports on the activities of the office and the activities of the individuals.

I do not think that is new. I do not think it is specific to UNHCR or to any of the U.N. organizations. What it reflects is that having foreign nationals, especially Westerners, in Vietnam and running around the country doing things with official permission, is something very new.

Mr. SMITH. Again, it may be the modus operandi of Communist dictatorships, but the fact of the matter is that it compromises the

integrity of a process which purports to protect those who speak out against any retaliation.

Mr. HORST. I do not believe it compromised the monitoring, and I do not believe it has served to compromise the monitoring. My guess would be that the lines of discussion pursued by the interviewing officials, whomever they are, with the national staff would be as much about the expatriate's personal activities and personal preferences as it would be about the professional endeavors.

Mr. SMITH. I thank you very much. Dr. Thang.

Dr. THANG. May I request about 30 seconds to set the record straight on one issue previously raised by Mr. Rohrabacher, and that relates to the case of a young woman.

It happens that I had worked on that same case in tandem with the office of the Congressman. At that time, I got the honor to work with Ms. Dawn Calabria, who used to be the director at UCC and who is now with the UNHCR.

In that case, that young woman was a victim of traumatic violence. She was raped. She was the sole survivor in her boat after a pirate attack, and she was screened out. Thanks to the intervention, and very strong intervention from Mr. Rohrabacher, the Deputy Prime Minister of Thailand interviewed her, and she was granted refugee status.

Now, she did not say that she would not go to the United States. The real story is that her uncle in France refused to take her. However, at the same time, there were two professors at USC Irvine who were willing to adopt her as their daughter, and they had already set aside an account for her college tuition.

However, the UNHCR, as I believe it is a bureaucratic vendetta against the Congressman, persistently deny her resettlement to the United States and persistently request that she go to France instead. They even sent officials of Vietnam to see her parents in Vietnam and told them that if she does not go to France, she will have to return to Vietnam. They sent the officials in France to go to her uncle in France, in Paris, telling him exactly the same thing.

So, finally she had to decide to go to France. The last information that we heard from her is that after a week, she was evicted from her uncle's house, and she was living in the street. I would like to set the record straight, just to be fair to that young woman and her family.

Thank you, Mr. Chairman.

Mr. SMITH. I thank you, Dr. Thang, and I want to thank our very distinguished panel for their expert testimony. This hearing is adjourned.

[Whereupon, at 6:15 p.m., the subcommittees were adjourned.]

APPENDIX

OPENING STATEMENT OF

THE HONORABLE DOUG BEREUTER (R-NE)
CHAIRMAN, SUBCOMMITTEE ON ASIA AND THE PACIFIC

Joint Hearing on

INDOCHINESE REFUGEES: **Comprehensive Plan of Action**

July 25, 1995

I wish to thank Congressman Chris Smith, Chairman of the Subcommittee on International Operations and Human Rights, for his cooperation in setting up this hearing in a manner which will allow us to consider this difficult issue in a constructive way.

We are facing a problem -- a serious problem -- which, under current conditions, is likely to get worse. The problems are, to some extent, unavoidable as we close down the complex process of handling twenty years of massive outflows from Vietnam since our departure in April of 1975.

The easy cases are done. Almost all the "screened in" Vietnamese have resettled in the U.S. and elsewhere. Nearly two-thirds of the "screened out" have returned to Vietnam. The 40,000 plus boat people remaining in the camps are, for the most part, ineligible for resettlement and refuse to return to Vietnam. The first asylum countries have made it clear they will not accept the asylum seekers permanently and they will not keep the camps open forever. UNHCR and the other resettlement countries all agree that the CPA should end.

What concerns me so greatly is that this already explosive situation was greatly exacerbated by the action of the House of Representatives. When we passed H.R. 1561, the American Overseas Interests Act, after rejecting my floor amendment to strike language in the bill on Indochinese refugees, the House by its actions irresponsibly stoked the fires.

In my view, this legislation turns U.S. refugee and immigration policy on its head and undercuts the United Nations High Commissioner for Refugees. Moreover, since the passage of this legislation we have seen ample evidence that what the House did through the passage of H.R. 1561 and the rejection of my floor amendment is predictably posing serious dangers for the asylum seekers themselves. The possibility of massive rescreeing in the refugee camps has given thousands of boat people false hope of resettlement in the U.S., resulting in violence in the camps, stopping a successful voluntary repatriation program and possibly prompting a new boat exodus from Vietnam.

As I see it, the issue before us today is simply stated. How do we convince the 40,000 plus asylum seekers, who have been determined to have no legitimate claim to refugee status, to return voluntarily to Vietnam? I would hope that each and every witness today will suggest ways to resuscitate voluntary repatriation of the screened out. For the sake of the asylum seekers remaining in the camps, I hope you can suggest practical and human solutions. As I have told some of you privately, I do not intend to seek a leadership role in devising a U.S. strategy for resolving this problem, but, at the same time, I certainly will not stand in the way of your efforts to do so.

OPENING STATEMENT OF
THE HONORABLE TOM LANTOS
SUBCOMMITTEE ON INTERNATIONAL OPERATIONS
AND HUMAN RIGHTS
JULY 25, 1995

I want to thank my friend Chris Smith for holding this important hearing. Concern for the remaining Indochinese boat people in detention camps in South East Asia is widespread. Just as widespread, however, is concern for maintaining the integrity of borders and the asylum process.

Given the exponential increase in refugee flows in recent years, the international community is striving to come up with new ways of preventing the warfare, poverty, and natural disasters that often trigger these mass migrations as well as new ways of coping humanely and effectively with those humanitarian crises they are unable to prevent.

The plight of the Indochinese boat people has been with us for twenty years now. It is a thorn in the side of the countries of first asylum, such as Hong Kong and Thailand, and a bitter fate for those who have languished for years in detention. In 1989, fifty nations joined together in the Comprehensive Plan of Action which screened the camp populations to determine who was eligible for resettlement abroad and also organized and monitored the repatriation of those who were

judged ineligible. Under the CPA process, 80,000 detainees were resettled, including 30,000 in the United States, and 72,00 Vietnamese and 25,000 Laotians have been voluntarily repatriated. Let me add that total Vietnamese immigration to the United States over the course of the past twenty years exceeds one million.

The CPA was an honest attempt by the international community to reach a fair, humane solution that balanced the desire of the host countries to attain the orderly return of individuals who had illegally entered their countries with the moral obligation of providing the detainees with a chance to apply for asylum in countries willing to accept boat people.

Most participants and observers of the CPA process think it has been successful, and this includes the monitoring of returnees. In Vietnam and Laos, the UN High Commissioner for Refugees; foreign embassies, including the U.S. embassy; and American and other non-governmental organizations monitor the Government's treatment of the repatriated boat people. These groups largely agree that monitored repatriation is working.

Good international cooperation has been the foundation of the whole process, and, as the CPA draws to a close, I worry that Chairman Smith's legislation will

unintentionally create vast problems by, one, raising false hopes in the remaining detainees that if they hold out a little longer, they will be resettled in the United States, and, two, by deeply offending and angering the other nations party to the CPA, who view the legislation as a unilateral change of the agreed upon procedures at the last minute by the United States.

Some here today will probably say that the right course of action would be to junk the CPA and start from scratch in order to find a system that does justice to our former allies, who are wasting their lives away in the squalor of the camps. Indeed, the perception of many in this body and the general American public is that the detainees are our former allies, whom we have cruelly abandoned to their fates. The truth, however, is far more complicated: for example, 60% of the population in the camps in Hong Kong are North Vietnamese, and they have been properly determined to be ineligible for resettlement.

Do we really want to give carte blanche to the North Vietnamese? If not, then it might be wise to think twice about implementing the Smith legislation. Moreover, the legislation has already led to greater unrest in the camps in Hong Kong, and it could lead to the complete breakdown of the entire CPA process.

Unless we are prepared to grant asylum to the remaining 50,000 (43,000 Vietnamese and 7,000 Laotians) camp residents, I think it would be a mistake to repudiate the CPA process. It will inevitably result in more suffering for the remaining camp populations and further difficulties for the countries of first asylum, which have clearly indicated they are not willing to allow the boat people to stay. The host countries could resort to brutal involuntary repatriations of the kind the Thais conducted with Cambodians a few years ago. This is in nobody's interest, and I would ask that as we consider today how best to resolve the plight of the boat people, we keep this frightening scenario in mind.

JULY 25, 1995

STATEMENT OF CONGRESSMAN TOM DAVIS BEFORE THE JOINT HEARING OF THE HOUSE COMMITTEE ON INTERNATIONAL RELATIONS' SUBCOMMITTEES ON ASIA AND THE PACIFIC AND INTERNATIONAL OPERATIONS AND HUMAN RIGHTS.

THE REFUGEE SITUATION IN INDOCHINA

Thank you Chairman Bereuter and Chairman Smith for holding this important hearing and for allowing me to sit with your subcommittees to discuss the refugee situation in southeast Asia. I would also like to thank Chairman Gilman of the full International Relations Committee for his leadership in the area of refugee assistance. I wrote a letter to Chairman Gilman earlier this year requesting these hearings and I appreciate the Committee's willingness to address this difficult issue in a timely fashion.

Along with Congressman Jim Moran, I represent an area in Northern Virginia which is home to many thousands of Vietnamese refugees who have come to this country to seek freedom and security. Unfortunately, many of these new Virginians are separated from family and loved ones who remain in the refugee camps in Hong Kong, the Phillipines, and southeast Asia. I have received numerous reports from my constituents which provide credible evidence that these refugee camps are overwhelmed by corruption and mismanagement. I am concerned that corruption is tainting the refugee screening process conducted by the United Nations High Commissioner for Refugees (UNHCR) and funded by the United States. A completely fair and conscientious screening process is necessary to avoid the tragic consequences of repatriating genuine refugees to Vietnam.

I look forward to participating in today's hearing, as well as Thursday's hearing before

Chairman Smith's subcommittee, in order to learn more about the conditions at these camps and to discuss the need for more aggressive U.S. policy to guarantee that victims of political and religious persecution receive the fair treatment that they deserve.

Congressman Steve Gunderson
Statement for the Record
Committee on International Relations

Subcommittee on International Operations and Human Rights

Assessment of the Comprehensive Plan of Action

August 2, 1995

Mr. Chairman, on behalf of several thousand Hmong in western Wisconsin, I would like to thank you for holding this hearing on the performance of the Comprehensive Plan of Action (CPA). Although negotiated with good intentions, the CPA has been executed in a way which has denied the rights of many deserving refugees. As a result, we have delayed resolving the refugee problem throughout Southeast Asia.

I have prepared this statement to provide evidence of how the CPA has operated with respect to one special group of Southeast Asian Refugees: Hmong refugees in Thailand. They are special both because they served with us in the Vietnam War and because many have come to live in my Wisconsin district. Many of my constituents have relatives which are still in Thai refugee camps. I have heard often from them regarding the conditions their relatives face in the camps and the tragedies they faced upon return to Laos. Unfortunately, in the name of voluntary repatriation, certain refugees were put in prison to "encourage" other refugees in the camp to return to Laos. Other refugees were told they could not go to a third country even though they were screened-in and eligible to return. Yet others were encouraged to pay bribes to Thai officials so they could join their relatives in the United States.

Mr. Chairman, between December 28, 1994, and January 2, 1995, a member of my staff participated in an independent fact-finding mission during which some of these abuses were investigated. I would like to describe one of the most egregious cases of abuse in Thailand under the CPA and one which continues to this day. It involves six Hmong who were residents of the Ban Napho repatriation camp in Northern Thailand and imprisoned for their opposition to forced repatriation.

The Six Prisoners

On September 16, 1994, my staff received a copy of a petition signed by thousands of Hmong at the Ban Napho camp expressing their desire to come to the United States or to stay in Thailand. The petition was organized by six senior Hmong camp leaders: Xay Hua Yang, Kham Pham, Tong Xee Yang, Vang Bee, Fai Yee Xiong, and Blia Thai Xiong. The last two of which have relatives in my congressional district. On September 19, 1994, the six were arrested at Ban Napho camp. On December 31, 1994, the fact-finding delegation visited the six in the Suan Phlu immigration prison and questioned them about how they were imprisoned.

Three of the six were told that staff from the United Nations High Commissioner for Refugees (UNHCR) wanted to meet with them and were waiting for them at the camp commander's office. When they arrived at the office, officials from the Thai Ministry of the Interior were waiting with the UNHCR staff and took them away in a car to Bangkok. The other three leaders were told by officials from the Thai Ministry of the Interior that the governor of Nakhom Phanom province (in which the camp is located) wanted to meet with

them at the gate at the front of the camp. When they reached the front gate, they too were taken by car to Bangkok where they were imprisoned in the Suan Phlu immigration prison.

Coerced "Voluntary" Repatriation

The six indicated that they were imprisoned because of their opposition to the pressure the camp officials put on the refugees to return to Laos. The six indicated that camp commanders cut food and water rations, imprisoned and forced most camp residents in an inner-perimeter section and cut them off from nearly all outside contact. The six had organized the petition to call attention to the widespread opposition to repatriation. The U.S. Embassy acknowledged that the six were imprisoned to prevent the repatriation program from ending. On October 3, 1994, Edward H. Wilkinson, Counselor of the U.S. Embassy in Thailand for Refugee Affairs, noted in a letter to the Lao Human Rights Council that the six "had been moved" to Suan Phlu to prevent them from protesting. The letter indicated that the six would remain in prison until "until they sign[ed] up voluntarily to return to Laos." The letter also indicated that the Thai Ministry of the Interior would imprison others if they were "perceived to be creating obstacles to voluntary repatriation."

In essence, the U.S. Embassy affirmed the Thai government's treatment of the six Hmong prisoners. If repatriation was occurring voluntarily, then people should not have been afraid to return to Laos. Instead, the Embassy's letter noted that the six would remain in prison until the coercion inherent in confinement forced them to sign the papers to return to Laos. This is not voluntary repatriation. At a minimum it is intimidation by restraint.

During the fall of 1994, my office had heard through third parties that the six were

not receiving adequate medical care and perhaps insufficient nutrition. To express our concerns, Representatives Gilman, Leach and I sent a letter to Ruprecht von Arnim, Representative of the UNHCR in Bangkok on November 22, 1994. The letter asked that the UNHCR send back a picture of the six with a current edition of the Bangkok Post to ensure that all were still there and were in good health. On December 7, 1994, Mr. Arnim replied, contending that the six were continually monitored by full-time UNHCR personnel at Suan Phlu. He stated that the six "are in good health and are receiving preferential treatment, including English classes. They are only complaining of boredom."

The hot, cramped conditions of the immigration prison would have convinced most people to leave as soon as the opportunity arose. When the members of the fact-finding delegation interviewed the six on December 31, 1994, they found them in one of the smaller holding cells, containing 18 people. The cell consisted of a large open area with a concrete floor and a toilet area in the rear. Those in the cell slept either directly on the concrete floor or on a towel or sheet placed on the floor. For food they were given two meals a day, consisting of rice and bamboo.

Although there had been unofficial reports that one of the six had decided to return to Laos, all six were in the cell. The refugees indicated that they had only been out of the cell once when a Thai official they knew from Ban Napho. The six said that they had never been visited by U.S. Embassy Officials, a typical courtesy, and that they had only been visited once by UNHCR officials. The Thai MOI had visited them four times, each time to ask the six to sign the paperwork to voluntarily return to Laos. When the men refused, the MOI officials would often state that the Hmong remaining in Ban Napho were signing up to go

back to Laos and would ask how long the six wanted to stay in prison. The six stated that they had never been offered or had participated in English classes while in prison

The six complained about the physical conditions in the prison. By the time the delegation visited the six, they had been in prison for over three months. One complained of having a fever and two had ulcers. They had not been visited by a doctor and asked for medical care. They were not permitted to go outside to exercise and complained generally about atrophy.

Conclusion

Mr. Chairman, shortly after the delegation met with the six prisoners, they were moved to a high security repatriation camp called Sikhiu. We have learned that while their living conditions have improved, they are still in danger of being forced back to Laos. It is clear that the CPA was not intended to imprison people in order to convince them that they want to go back to their country of origin. It is also clear that it is wrong to allow an organization like the UNHCR to cover up the problems with this refugee program to save political face. Obviously, there is much that can still be done to ensure that the remaining refugees are afforded just treatment.

In Thailand, there are a small number of screened-in refugees that have not been repatriated. I ask you, Mr. Chairman, and other members of the Committee, to continue to work closely, yet firmly with the State Department. We must ensure that the six and the remaining screened-in refugees have a chance to live out the rest of their lives in peace away from the threats and coercion of camps and prisons.

PHYLLIS E. OAKLEY
Department of State

Phyllis E. Oakley is Assistant Secretary of the Bureau of Population, Refugees, and Migration. A career Foreign Service Officer and member of the Senior Foreign Service, she became Senior Deputy Assistant Secretary in the Bureau, which was previously known as the Bureau for Refugee Programs, in September 1993. She was Deputy Assistant Secretary for Regional Analysis in the Bureau of Intelligence Research from 1991 to 1993.

Mrs. Oakley served as the Deputy Spokesman of the State Department from November 1986 until the end of January 1989, the first woman to hold this position. From 1989 until mid-1991, she was on loan to A.I.D., working with the Afghanistan Cross-Border Humanitarian Assistance Program in Islamabad, Pakistan. She was the State Department's Afghanistan Desk Officer from 1982 to 1985.

Born in Omaha, Nebraska, Mrs. Oakley grew up in St. Louis, is a Phi Beta Kappa graduate of Northwestern University, and holds a Master's Degree from the Fletcher School of International Law and Diplomacy of Tufts University. She has also taught American History at Centenary College in Shreveport, Louisiana, and served as a consultant in international affairs to the National Board of the YWCA in New York City.

In the State Department, Mrs. Oakley has had a wide range of assignments with primary emphasis on the Middle East, first in the Bureau of International Organization Affairs, and as a Special Assistant on the Middle East to Mr. Philip Habib, when he was Under Secretary for Political Affairs. In addition, she worked with Congressional and Public Affairs in the Latin American Bureau and served as Assistant Cultural Affairs Officer in Kinshasa, Zaire, from 1979 to 1982. Mrs. Oakley also served in the Bureau of Legislative Affairs as the Legislative Management Officer for the Near East and South Asia. From September 1985 to June 1986, she was a Pearson Exchange Fellow in the office of Senator Charles Mathias.

Mrs. Oakley joined the State Department in 1957. Upon marrying a fellow Foreign Service Officer, she resigned a year later in accordance with regulations prohibiting married female officers in the Foreign Service. She was able to rejoin the Foreign Service in 1974. She and her husband, retired Ambassador Robert B. Oakley, have two grown children and three grandsons.

Phyllis Oakley has received two Departmental Superior Honor Awards, for her performance as Afghanistan Desk Officer and as Deputy Spokesman, and the Intelligence Community's National Intelligence Medal of Achievement. She was elected a member of the Cosmos Club in 1988 and is a member of the Council on Foreign Relations.

Phyllis E. Oakley
Assistant Secretary
Bureau of Population, Refugees, and Migration

July 25, 1995

Before the
House International Relations Committee
Subcommittees on
Asia and the Pacific
and
International Operations and Human Rights

EMBARGOED UNTIL 2:00 P.M., JULY 25, 1995

Mr. Bereuter, Mr. Smith and members of the committee, I welcome this opportunity to be here this afternoon to discuss with you where we stand and the concerns we face with regard to the Comprehensive Plan of Action for Indochinese Refugees (CPA). I look forward to your questions because I believe it is only when all our concerns are on the table that we can most effectively move forward together.

The CPA and Vietnamese

Since it has been the object of some attention and criticism in recent weeks, if you will permit me, I would like to review how the CPA came about and what has happened over the last six years. As you will recall, in the late 1980's large numbers of boat people continued to leave Vietnam and land on the beaches of first asylum countries in Southeast Asia and Hong Kong. That is, the lucky ones arrived on the beaches. We know that thousands of others suffered indescribably at the hands of pirates or drowned and starved en route. The flow of people was such that some first-asylum countries were stopping the boat people from landing, leading to further tragedies.

It was in this situation that the international community agreed that something had to be done to save lives and stem the flow of people from Vietnam. That something was the CPA which was agreed upon in 1989. As a result of the CPA, first-asylum countries of Thailand, Malaysia, Indonesia, the Philippines, and Hong Kong agreed to allow the boat people to land and, in turn, the international community agreed to the institution of a screening process to try to determine who were true refugees fleeing persecution and who were not.

Another aspect of the CPA, which we often forget, was the great expansion of the Orderly Departure Program (ODP) from Vietnam, which provided a safe alternative to flight by sea for those who were eligible for refugee status or some other form of legal emigration. Pursuant to the CPA, the United States negotiated a bilateral agreement with Vietnam to provide for the safe emigration from Vietnam through ODP of the tens of thousands of Vietnamese who had been released from reeducation camps, in addition to Amerasian and family reunion cases. Since its inception, more than 400,000 Vietnamese have been resettled in the U.S. under the ODP.

The CPA has generally worked. Most first asylum governments that were parties to the CPA sustained their commitments to permit boat people to land. Since the beginning of screening under the CPA, more than 120,000 Vietnamese have been screened, of whom 33,000 people have been found to be true refugees and resettled. The United States alone has resettled almost 13,000 of this number. During the same period, more than 72,000 persons have returned voluntarily to Vietnam. (Since 1975, the United States has resettled almost one million Vietnamese.) Resettlement in the U.S. is the end of a process

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for each asylum seeker who must first be screened in by the first-asylum screening team and then pass an individual interview with an officer of the U.S. Immigration and Naturalization Service as required by U.S. law.

The combination of the orderly departure program from Vietnam and the screening process in first asylum countries has led, during the last several years, to a virtual end of flight by sea from Vietnam. Thousands of people are alive today because of the CPA. Tens of thousands of others are now resettled in the U.S. and other countries because of the CPA.

The screening process has been completed. Approximately 40,000 Vietnamese remain in first asylum camps in the region, more than half of them in Hong Kong. Most of the 40,000 have been found ineligible for refugee status and, under the terms of the CPA, must return to Vietnam. Has the screening process been perfect? No. Has it generally been fair and in accordance with internationally recognized standards? Yes. We believe it has been. What is the fate awaiting those who return? The experience of the 72,000 who have already returned indicates that returnees will not be persecuted, but they will face the same challenges, chances and difficulties faced by millions of their fellow citizens.

Who has done the screening? Under the CPA, screening it first and foremost the responsibility of the first-asylum countries. This fact should not be forgotten as we discuss the screening process. UNHCR had the responsibility to advise and assist host-government screening teams, and to try to establish, as much as possible, uniform screening criteria.

The Government of Vietnam has made a commitment to the international community under the CPA that there will be no reprisals against the returnees. For six years now it has kept to that commitment.

Those who return are monitored by eight Vietnamese-speaking expatriate employees of UNHCR who visit returnees throughout the country. They are also monitored by others, such as representatives of the British Embassy. They receive \$290 to help them start their lives again. The United States has provided, over the last three years, more than \$8 million in assistance to returnees through four U.S. non-governmental organizations (NGOs). These NGOs have American staff dealing with and visiting returnees all over Vietnam. All of these present and probing eyes have not detected any pattern or practice of persecution of those who have returned.

At a time when Vietnam is becoming a full member of ASEAN, when it is aggressively seeking foreign investment, and when it is preparing to begin a new and positive relationship with the

U.S. in the wake of the recent establishment of full diplomatic relations, we firmly believe that Vietnam has a compelling interest in keeping its word on the treatment of returnees.

The CPA, then, has been a success in many ways -- in saving lives and in serving as a model of international humanitarian cooperation. The Sixth CPA Steering committee in March this year agreed that the end of 1995 would be a target for completion of work under the CPA in first asylum countries. Rapidly declining voluntary repatriation rates, which may in part be due to hopes of direct U.S. resettlement from the camps as suggested in CPA-related provisions of the House foreign affairs authorization bill have made it increasingly unlikely this target can be achieved.

Voluntary repatriation of the screened out always has been the goal of the CPA. Now hundreds of people who had signed up to return voluntarily to Vietnam have withdrawn their applications and new voluntary repatriation registrations have virtually ended. We are deeply concerned about unrealistic expectations of direct resettlement from first asylum camps for those who have been deemed not to be refugees. We believe that such expectations threaten to condemn those in the camps to a further period of suffering in lives that have already been put on hold for too long.

The expectations are unrealistic, we believe, because the first asylum countries have said they are committed to the implementation of the CPA and will not allow a rescreening in the camps. From their perspective, the CPA has been the answer to a major humanitarian and political challenge. The expectations are also unrealistic because in the best of circumstances, only a limited number of those in the camps would likely be encompassed within the CPA legislation that is part of the House bill. In the end, we would likely be back to where we were before the introduction of the legislation.

Finally, we are concerned about the effect upon Vietnamese in Vietnam of direct resettlement from first asylum countries of those deemed not to be refugees. Just as refugee screening and return on non-refugees has resulted in great reductions in boat flows, the abandonment of this principle could conceivably invite a new and dangerous exodus.

Given all this, where do we go from here? First of all, I believe that all of us, those who support the proposed legislation affecting the CPA and those who oppose it, want to do what is best for those in the camps. We respect the interest and the humanitarian commitments of the Chairpersons and Ranking Minority members of both these Subcommittees and your views have certainly informed our deliberations. Like you, we want the CPA to end in the most humane and fairest way

possible and always have. We do not put a deadline on the pursuit of fairness and justice. The CPA still permits review of cases where additional information may indicate that an initial screening decision was wrong. UNHCR has looked into allegations that corruption and impropriety might have been involved in a small number of screening decisions and, we understand, the results of this review has been given to the committees.

The United States is firmly committed to the integrity of the CPA and to the principle that there can be no resettlement of non-refugees directly from first-asylum camps. Our policy has been and continues to be clear: those who have been deemed not to be refugees pursuant to CPA procedures would return home to Vietnam.

At the same time, we are prepared to address concerns about those in the camps who, while they were not deemed to be refugees, might nonetheless be of special humanitarian interest to the U.S. As we consider this issue, we are also eager to find creative means to further encourage the voluntary return process.

For each of these reasons, we are discussing with our CPA partners, and would be prepared to support, a proposal to provide opportunities for resettlement interviews upon return to those now in the camps who agree to return to their homes voluntarily. The exact details of this proposal would be determined, in part, as a result of consultations with those governments whose cooperation would be required for its successful implementation.

Let me stress again that any such program would have to be consistent with CPA principles and would thus require that the applicant first return home.

We plan to do all we can, with the support of our international partners, to bring the CPA to a just conclusion. We believe the best way to do this is to support the unanimous agreement of the Sixth CPA Steering Committee to move forward in support of voluntary repatriation as the preferred method of return for the screened-out. It is only with this clear message that we can hope to end the confusion and uncertainty in the camps and allow people to act on self-interest rather than false hope.

The Lao/Hmong in Thailand

I would now like to address the question of the Lao/Hmong refugees in Thailand, the other group of people covered under the CPA for whom we have an equally important responsibility. While the Hmong are part of the CPA, there is a distinct

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difference between the situation of the Hmong and the Vietnamese. The Hmong now in Thailand are, in the main, people who are recognized as refugees by virtue of the fact that they fled their country and arrived in Thailand before Thailand began basing refugee status on individual interviews in 1985. The majority of Vietnamese, on the other hand, have been determined through a comprehensive screening process not to be refugees.

The United States has admitted some 126,000 Hmong and other Lao Highlanders to the United States since 1975. There remain approximately 7,000 Hmong refugees in camps in Thailand and the United States is prepared to accept for resettlement as many as are eligible under our law. The complicating factor with regard to the Hmong is that many originally indicated to Thai authorities that they wished to return to Laos and this decision was considered firm at the time. In fact, more than 22,000 have returned from Thailand and others continue to do so, starting new lives with the assistance of UNHCR and programs the U.S. supports both bilaterally and through UNHCR.

In view of the end-of-1995 target date for ending the CPA established by the Steering Committee, and considering the fact that this reality may have caused some Hmong refugees to change their minds about return to Laos, we are involved in ongoing discussions with the Royal Thai Government about the possibility of allowing Hmong refugees access one last time to resettlement in the U.S. While the timing of such access, which we support, remains the prerogative of the Thai Government, and the current Thai policy of promoting voluntary repatriation is consistent with international refugee standards and principles, we expect the issue will remain the subject of our constructive dialogue with the Thai on refugee issues.

Conclusion

I would like to conclude by noting again that we fully support the CPA as it affects both the Vietnamese and Lao/Hmong. We believe the CPA has accomplished a great deal that is good, and has been a humane and effective channel through which the United States and the international community, with the vital assistance of UNHCR, has sought to resolve the final tragic legacies of the war in Indochina.

DANIEL WOLF graduated from the University of Michigan Law School in 1986 and went to work as an attorney-advisor at the Department of State. In 1989 he joined the firm of Hughes Hubbard & Reed on the understanding that he would devote 40 percent of his time to pro bono work on behalf of refugees and other human rights issues. He spent five months in Hong Kong challenging screening procedures in use there. Upon returning to the States, Mr. Wolf founded LAVAS, a legal defense organization for Vietnamese asylum seekers. As general counsel of Legal Assistance for Vietnamese Asylum Seekers (LAVAS) for the past five years, he has interviewed hundreds of Vietnamese asylum-seekers inside the camps. Mr. Wolf is currently lead counsel in a class action suit challenging the State Department's decision to refuse to process the immigrant visa applications of Vietnamese boat people in Hong Kong.

PREPARED STATEMENT OF DANIEL WOLF

BEFORE THE SUBCOMMITTEE
ON INTERNATIONAL OPERATIONS AND HUMAN RIGHTS
OF THE COMMITTEE ON INTERNATIONAL AFFAIRS
HOUSE OF REPRESENTATIVES

JULY 25, 1995

Mr. Chairman and members of the Subcommittee:

Thank you for the opportunity to present my views concerning the continuing plight of the Vietnamese boat people in Southeast Asia and Hong Kong.

Six years ago, the Comprehensive Plan of Action ("CPA") was adopted at a U.N. sponsored conference in Geneva to respond to the persistent and accelerating flow of Indochinese refugees. Accepting the view that a significant portion, if not a majority, of Vietnamese boat people were economic migrants, the CPA called for "the establishment of a consistent region-wide refugee status determination process" to identify on an individual basis which of the boat people were political refugees and which were not.

Under the CPA, those determined to be refugees ("screened-in") are permitted to resettle abroad. Those determined to be non-refugees ("screened-out") are "encouraged" to return to Vietnam voluntarily. If they do not opt for such voluntary return, they are detained indefinitely pending their eventual deportation to Vietnam. The success of the CPA depended from the outset on the ability of the region-wide screening process to identify "genuine" refugees with an acceptable degree of

accuracy. As Thorvald Stoltenberg, the former High Commissioner of the United Nations High Commission for Refugees ("UNHCR") put it, "the purpose of the CPA is to provide settlement for those who are refugees and repatriation for those who are not. This is proper and in accordance with international practice only if the screening process is fair and credible."

The difficulty was that from the outset Hong Kong and the other first asylum states viewed the purpose of the screening process as being to discourage the flow of boat people from Vietnam, rather than to identify which of the boat people were entitled to international protection. Indeed, before the initiation of screening, Hong Kong officials confidently predicted that only ten percent of the Vietnamese population were likely to be screened in under the new procedures. And, in fact, after the initiation of screening, the ten percent target was met with alarming frequency. This was not a mere coincidence. The prophecy was a self-fulfilling one. In view of such attitudes toward screening, it should not be surprising that immigration officers in each of the five first asylum states frequently and erroneously denied compelling claims to refugee status, both by accident and by design.

Every independent human rights organization that has reviewed the screening procedures, including Amnesty International, Asia Watch and the Lawyers Committee for Human Rights, has concluded that they were critically flawed. Among the list of defects reported by these organizations are

inadequate notice before scheduled interviews, denial of basic information about the screening process, denial of the right to legal representation, biased and incompetent immigration officers, incompetent and poorly trained interpreters, failure to provide an accurate interview record and failure to inform asylum-seekers of the reasons for the denial of their claims prior to appeal.

While the human rights groups have uniformly condemned the screening process, the UNHCR has inexplicably defended its integrity and fairness. Similarly, the Department of State, though it is fully appraised of the flaws that plagued screening, continues to represent to this Committee, to this Congress and to the American public that the screening was fair and was implemented in a humanitarian spirit. This is shameful.

Mr. Chairman, my testimony today is from personal knowledge. In January 1990, while I was visiting Hong Kong on an unrelated personal matter, I made my first trip to the detention camps in which the Vietnamese boat people are housed. I spent the next three months observing the implementation of the screening procedures from inside the camps. I personally interviewed dozens of screened-out boat people, sometimes spending more than ten hours with a single individual. In many cases, I was able to compare the information obtained through my interviews with the actual files and opinions prepared by the local immigration officers assigned to those cases. I was so appalled by what I found that when I returned to the United States, I co-founded

LAVAS, an organization whose mission it is to provide free legal assistance to Vietnamese asylum-seekers in Southeast Asia. I have since visited detention camps in each of the first asylum states, interviewed literally hundreds of Vietnamese boat people and discovered the same problems with the screening process everywhere I went. Based on my review of the evidence, it is my unqualified opinion that the State Department's description of the screening procedures is grossly inaccurate and that, in reality, the process was a mockery of justice.

This Committee need not take my word for this. Let me read just a few representative examples taken from actual opinions of the Immigration Department of Hong Kong.

- HK1 burned the communist flag during the Tet celebration in 1988 in protest of the maltreatment that he and his family had suffered at the hands of the communist regime for more than three decades. For this, he was severely and repeatedly tortured. Upon attempting to explain this story to a Hong Kong immigration officer, he was cut off and told that it was not relevant. The officer then denied HK1's claim because it was "obvious" that he fled Vietnam "exclusively for economic considerations." As there was nothing about the flag burning incident in the record, it was not believed by the Review Board. More telling, however, is the Review Board's conclusion that even if the incident did happen "it was an admitted criminal offence and his resultant punishment did not amount to persecution."
- After witnessing communist atrocities at Hue, HK2 surrendered to the Army of the Republic of Vietnam ("ARVN") and then served with both the ARVN and the U.S. Army's 101st Airborne Division. After the communist takeover of South Vietnam, he was imprisoned in re-education camps for nine years before bad health compelled his release. The Hong Kong Review Board denied his claim, stating that "the reason for his sentence was the serious and treacherous nature of his action in surrendering to the enemy and fighting with them in time of war. An offence of this nature does

not bring him within the Convention and Protocol on the Status of Refugees." I should add that ultimately, after an extraordinary personal appeal to Madam Ogada, the UNHCR granted HK2 refugee status under its own mandate, but only after such protection had been refused by the UNHCR Office in Hong Kong.

- HK3 is, in the words of the Hong Kong Review Board, "A former ARVN soldier who, with family, was sent to an NEZ [New Economic Zone] which he left in 1980 without permission due to illness and so was deprived of his ho Khau [family registration card]. He organised an illegal escape attempt and sentenced to a total of four years' imprisonment. . . . This VBP [Vietnamese boat person] suffered no persecution as his forced move to an NEZ was an obligation under a Vietnamese national policy with (sic) applies to many citizens, and his imprisonment was for a criminal offence." I should pause to note that while the Review Board describes forced movement to the NEZ as a national policy of general application, it was, in reality, primarily a policy to control and punish the families of those associated with the U.S. presence in Vietnam by sending them to barren, malaria and mine infested areas located deep in the heart of the jungle where they were to build "a new life."
- The Review Board denied the case of HK4, a Vietnamese boat person who organized a petition to prevent the destruction of a Buddhist temple, because "the Applicant said that he dare not take part in the work of destroying the temple. His statement dare not emphasized his superstition, he did not say he would not destroy the temple. The authorities tried to arrest him as he was one of the organizers of the petition. Afraid of the consequences, he ran away, hid himself to avoid being arrested and fled his homeland later with his family . . . [T]hese reasons do not fall within the criteria of the [Refugee] Convention."

As the following opinions from the Immigration Department of the Philippines illustrate, the screening decision were no better there than they were in Hong Kong.

- In the case of P1, the immigration officer wrote that the following facts had been established: "That applicant's father was associated with the past regime and soldier of the South Vietnamese Army. That after the fall of Saigon they were sent to the NEZ. That their property was confiscated by the government. That his education halted (sic) by the new regime. That his

economic well-being became miserable because of restriction (sic) imposed by the communist government upon the applicant. He was denied the opportunity to continue his studies. In obtaining the facts of this case, [it is] clear[] that applicant herein has not satisfy (sic) the requirement imposed by the . . . 1951 Geneva Convention."

- The Philippine immigration officer denied P2's case because "the difficulties that the applicant had gone through like his being reeducated, his going to the NEZ and the confiscation of his house are just consequences of the change in government" and "didn't lead to consequences of (sic) substantially prejudicial nature."
- The claim of P3 was denied because "his difficulties [including a year in detention] only started when he was involved in an (sic) anti-communist activities. He was closely watched and monitored after that, but this could not be a form of persecution. It's but normal for every state to monitor the activities of violators, in the exercise of police power, to avoid repetition of similar offense."
- The opinion in P4's case reflects that she was sexually abused after being arrested for publicizing a ceremony to celebrate the canonization of 114 Vietnamese martyrs by the Catholic Church. The officer denied her case on the ground that such sexual abuse "is a criminal offense committed by said police officers. She could have filed a case against them. The alleged "molest[ation]" happened in 1988 where (sic) judicial system in Vietnam is (sic) already at work."
- The file in P5's case reads as follows: P5 "was denied admission to school because her family is capitalist. This would appear as a deprivation of her opportunity to study because of being (sic) a member of a certain social group. But given her family background it would seem that even if she was allowed to continue her studies, she would not be able to finish it because her family is not well-off because her father's business was confiscated. Her brother left Vietnam because he wanted to continue his studies. Both of them are merely seeking greener pastures."
- Finally, in the case of P6, the record of the immigration officer states that as a former soldier he was re-educated for six months in 1975 and "his father was killed by the communists with no reason at all." Nevertheless, the officer denied P6's claim on the

ground that he could not establish "a well-grounded fear that he will be killed in Vietnam.

These cases are typical of the logic (or lack thereof) employed in the denial of literally thousands of refugee claims in Hong Kong and the Philippines.

Even in those rare cases where the refugee criteria of the 1951 Convention appear on the face of the opinion to have been correctly applied, it is impossible to have confidence in the accuracy of the decision because the factual record upon which it is based has no integrity. Indeed, the records of the immigration interviews in Hong Kong that I have reviewed read more like an exercise in creative writing (and a poor one at that) than an accurate transcription of an adjudicative hearing. When I have read back the notations of the immigration officers to asylum applicants, their reactions typically have been ones of genuine astonishment, anger and frustration. Reviewing the immigration record with asylum-seekers line by line, one discovers patently obvious errors in transcription, responses twisted or distorted to weaken the applicants' persecution claims, and answers recorded to questions that were never asked.

In many cases, the files themselves betray the bias of those who prepared them. Indeed, many of the comments in the files of the immigration officers are incredible on their face. For instance, in one case in which the applicant and his family had been forcibly relocated to an NEZ in the jungles of Dac Lac, the immigration officer wrote that he was not denied the right to education because he admitted that he could "go to college" in

the NEZ. In another case, the immigration officer wrote that the applicant stated that his father "was not required to do labour work" when he was sent to re-education camp. In many other cases involving families with intimate ties to the former South Vietnamese military who suffered severe forms of discrimination, the record simply reads that "the family situation did not change after 1975." Though it is a historical fact that the children of many former ARVN soldiers were denied educational opportunities in the years after the fall of Saigon, it is often recorded in the immigration files that such children "quit" school because they "did not like to study."

Comments such as these are pervasive. Moreover, there are glaring and suspect similarities among the files of those who have been denied refugee status. For example, if one is to believe what is recorded in the files, the vast majority of screened-out asylum-seeker in Hong Kong who were interviewed in 1988 and 1989 stated that they left Vietnam for "a better living overseas" and that they refused to return because they were "afraid of being punished for [their] illegal departure."

The records of the status determination process in Hong Kong and the Philippines speak for themselves. Unfortunately, virtually no such records are available from the other three first asylum states -- Malaysia, Indonesia and Thailand. The governments of those countries were clever enough not to issue written decisions explaining the basis for the denial of claims by their respective immigration departments. Based on extensive

interviews with asylum-seekers, however, there is every reason to view UNHCR's insistence that the screening was fair in these countries with profound skepticism. Indeed, in Thailand and Indonesia it appears that the screening process was even more unjust than it was in Hong Kong and the Philippines. In Indonesia, for instance, the UNHCR has verified reports of widespread corruption involving immigration officers who extorted bribes and sexual favors in exchange for positive screening results. In Thailand, where there are also reports of widespread corruption, the UNHCR's ability to provide professional and independent oversight was severely compromised by a requirement that almost all UNHCR's legal consultants be hired locally.

In an effort to remedy some of the egregious errors in the screening process, the CPA working group of Interaction (a joint affiliation of U.S. non-governmental organizations engaged in international programs) persuaded the State Department to review the cases of some 550 asylum-seekers who Interaction had reason to believe were genuine refugees that had been wrongly screened out. Based on the information provided by Interaction, the State Department concluded that the vast majority of the cases were weak and recommended that the UNHCR extend its protection mandate in favor of just 48 of the 550 cases. Of these 48 cases, the UNHCR reported that 12 had previously been recognized as refugees upon appeal and granted mandate protection in only two of the remaining 36 cases.

Interaction was extremely disappointed with the results of the review process, which had been agreed upon with the State Department and UNHCR after extensive negotiations. Among the cases that were considered to be too weak to merit reconsideration by the State Department were the following.

- HK1 -- the Vietnamese boat person from Hong Kong who was tortured for burning the communist flag.
- HK5. After the communist takeover in 1975, HK5 and his family were forcibly relocated to an NEZ in the jungles of Dac Lac where he lived for 12 years. During that time, he was stricken with malaria and dysentery and subjected to forced labor. Shortly before fleeing the country, he was arrested and severely beaten for participating in a Catholic choir. HK5's inclusion on the Interaction list was an accident because, in fact, the Hong Kong Immigration Department's decision to deny him refugee status was ultimately reversed following an extraordinary legal challenge to the denial of his claim. Despite this admission of mistake on the part of the Hong Kong immigration authorities, our own State Department regarded the original decision in HK5's case as correct and thus refused to recommend the case to the UNHCR.
- HK6. This Vietnamese boat person is a political and religious dissident who was re-educated and tortured for his political activities. He was forced to flee Vietnam after the Hanoi regime cracked down on the anti-communist organization in which he was involved and arrested many of its members. When I asked a Department official why the Department regarded his case as having no merit, he told me that any problems he would face upon returning to Vietnam would be of his own making -- since such problems would only result from his insistence on resuming his political activities there.

The results of the State Department review of the Interaction cases demonstrate the futility of attempting to resolve the errors in screening on an ad hoc case by case basis through existing channels. Moreover, even if the State Department and the UNHCR could be persuaded to give more

sympathetic consideration to such cases, the non-governmental organizations with their limited and, in some cases, non-existent access to the camp population can only identify a fraction of the number of genuine refugees whose cases were wrongly refused. On the other hand, I do not believe that there is any realistic prospect that the countries of the region or the UNHCR would be willing to conduct a comprehensive re-screening of all those who have been denied refugee status.

Nonetheless, I am firmly of the view that something must be done to correct the injustices of a process that has resulted in the separation of families and the denial of refugee status to a great many persons whose claims are factually indistinguishable from thousands of claims that have been accepted. Prompt action is necessary not only to protect genuine refugees from refoulement, but to avoid the humanitarian catastrophe that I believe is likely to come about if we simply wait until the first asylum states decide to forcibly repatriate the boat people en mass. Together with Shep Lowman and Lionel Rosenblat, President of Refugees International, I have helped prepare a proposal that I believe stands a realistic chance of breaking the current impasse and bringing the Indochinese refugee program to an end in the same humanitarian spirit in which it was founded two decades ago. This proposal, which would give all Vietnamese boat people in the camps of first asylum access to an INS interview (either in the camps if the countries of the region would permit it or in Vietnam if they will not) and establish presumptive eligible

categories for those whose loyalties the Hanoi regime has traditionally regarded as most suspect, will be explained in detail in the testimony of Mr. Lowman. In view of the fact that re-screening by the first asylum states is neither a realistic, nor frankly, a desirable option, I would urge the Subcommittee to give this proposal very serious consideration.

PAM BAKER represents Refugee Concern Hong Kong at this hearing. Refugee Concern is an advocacy group mainly working for the Vietnamese boat people in Hong Kong. Pam is a Scot, a lawyer admitted to practice in Scotland, England and Hong Kong. Pam is a family lawyer and acts as consultant to a firm in Hong Kong. She also runs a small firm of solicitors in Hong Kong whose work is exclusively for Vietnamese boat people. She has the assistance of volunteer lawyers from the States, Australia and England. They have brought a number of cases to the Courts in Hong Kong and will appear this December before the House of Lords in London, which is the Court of final appeal for Hong Kong cases until the handover of sovereignty to China in 1997. They have only their own resources, but they have energy and enthusiasm enough to manage. They are able to remain fiercely independent. Pam Baker's involvement in the boat peoples' cases is long standing and she has experience of the details and politics of the Comprehensive Plan of Action.

PRESENTATION BY PAM BAKER
TO THE HOUSE SUBCOMMITTEE ON
INTERNATIONAL OPERATIONS AND HUMAN RIGHTS
Washington D.C., 25th July 1995.

No one can safely say that the forcible repatriation of Vietnamese boat people will not be refoulement of refugees. This is not to say that all Vietnamese boat people are refugees, but it is to say that the screening decisions are so unsafe that they cannot be relied upon. It is not the system which was used for screening boat people that is complained of. In Hong Kong it was the most expensive, the most elaborate system imaginable, and the criteria were to be those of the U.N.H.C.R., in their Handbook on Determination of Refugee Status. It was the method in which it was carried out that fell far short of the standards envisaged. As Mark Twain said, an idea is not responsible for the people who hold it.

SCREENING

I can only speak for its implementation in Hong Kong, but I can speak of that with authority as I have seen many hundreds of interview notes and decisions.

(A) IMMIGRATION

(a) Interviews

The first stage was an interview with an Immigration officer, in uniform, frightening enough in itself to those who had come from a repressive regime, who regarded this as an undesirable posting and who had only cursory training for the job, with a Government interpreter who had been out of Vietnam for many years and was unfamiliar with much of the post 1975 terminology of Vietnam. There were many allegations of Immigration Officers being obstructive, hectoring and inadequately briefed. Some of them were impatient and eager to finish the interview. There were also some marked failures in interpretation which specifically led to mistakes. To begin with the interview was not read back to asylum seekers, so that the more glaring mistakes might be corrected. Many of those early determinations still stand, and the glaring flaws in them have never been addressed. Trilingual interpretation did not help. Chinese to Vietnamese, back to Chinese, then the interview written out in English by the Immigration Officer.

(b) Decisions

Although the decisions which have been made over the years vary considerably in the length and detail they contain, all have certain characteristics in common.

These stem from, firstly, the "quota" which was set before screening ever began - It was publicly announced by Hong Kong Government that **not more than 10%** of boat people would be found to be refugees. **Not more than 10% ever were found to be refugees.**

Secondly, the decision making Immigration officers started their determination with the conviction that they were interviewing economic migrants. See Amnesty International's Memorandum in January 1990, regarding protection of Vietnamese asylum seekers in Hong Kong.

(B) REFUGEE STATUS REVIEW BOARD

The second stage was before the Refugee Status Review Board. At appeal level, there is an expectation of higher standards. Less than three months after the Board was set up its Chairman was quoted as stating " Real refugees are hard to find. **Lies are legion**, as many migrants pose as refugees and try to deceive not only the Director of Immigration but also the Board.." He went on to say that the Board was looking for refugees. It has to be said that this is not apparent from their decisions. The tone of R.S.R.B. decisions was set in a mould of scepticism, and findings of lack of credibility abound. It is also known that considerable pressure was brought to bear upon Board members who had a humanitarian attitude to their job, to reverse their positive decisions. See, for instance, the poem by Hugh Sinclair which appeared in 'Refugee', the U.N.H.C.R. magazine. No doubt there are other Board members who felt the same but who did not speak out.

Apart from findings of lack of credibility (which are notoriously difficult to judicially review) the Board had many boiler plate clauses with which it hoped to protect itself from judicial review. For instance the Board might decide not to hold an interview with the Applicant. The boiler plate for this was "It was appreciated there were differences between what had been recorded by the Immigration Officer and what had been submitted by or on behalf of the Applicant. These differences were noted and taken into consideration by the Board". What followed made it clear that those differences were in fact used against the applicant.

A further ritualistic jingle was used when the Board had interviewed the asylum seeker, thought he might be a refugee, and then decided that "his demeanour was poor at interview" and therefore the asylum seeker was discredited. The line of questioning would have demoralised a hardened criminal in the dock.

REMEDIES

(A) JUDICIAL REVIEW

The Hong Kong Government has been inclined to say, publicly, that

(i) the process of **judicial review** in the Courts was open to asylum seekers whose decisions were questionable. In the event **this was not true**. The applicants had no money to file suit. Legal Aid had been granted to nine asylum seekers, of which two were heard [**Do Giao and Others**] in 1991. One had judgment in his favour handed down, and the second judgment, in the case of a woman persecuted for her religion in Vietnam, was due next morning. It

would have been even more embarrassing to the Government than the first one had been. Frantic negotiations took place and the whole lot were swept under the carpet with an offer of rescreening by a "specially constituted Board". The refugee plaintiffs were by then without any advisers whom they could trust, so they accepted the offer. That was because their legal representation was changed by the Department. Thereafter the Legal Aid Department (which is a Government Department) went to great lengths not to assist refugees to seek judicial review. There are 848 applications for legal aid which remain outstanding, some for as long as three years, awaiting decisions. If anyone having such an application outstanding is forcibly repatriated, there is a serious risk that Hong Kong is refouling refugees.

(B) MANDATE

- (ii) The Hong Kong Government also prayed in aid the exercise of the U.N.H.C.R.'s mandate, as a "safety net".

While they were making these two statements the Government was ensuring that an asylum seeker was unable to obtain the interview notes in his screening or the Immigration decision, unless he wrote within 3 months of the R.S.R.B. decision, using the words "judicial review", to the Immigration Department. Not many Vietnamese asylum seekers had ever heard of judicial review, and the R.S.R.B.'s notice of decision bears on its face the words "This decision cannot be reviewed by any Court." Certainly no Vietnamese asylum seeker was aware of a statutory limitation of three months for the seeking of leave for judicial review. Furthermore the U.N.H.C.R. also flatly refused to release the file to an asylum seeker or his or her representative for the purpose of applications for mandate. It was clear that the Government and U.N.H.C.R. had agreed upon this policy.

Both of these statements by the Hong Kong Government were therefore hypocritical and cynical in the extreme. It is effectively impossible to seek judicial review of a decision when you do not have the material upon which the decision was based. Equally, a mandate application to the U.N.H.C.R. can prove impossible to establish, following a screening procedure in which everyone concerned is in possession of the relevant material, **EXCEPT THE ASYLUM SEEKER and/or his adviser.**

SUMMARY

The screening in the region has been corrupt. There are factual reports on the corruption in Indonesian screening and Philippines screening. The screening in Hong Kong has not been overtly corrupt in the same sense as the other first asylum countries, but has been permeated by bias and prejudice against the asylum seekers. They have been cheated of a fair hearing of their claims. They will not return to Vietnam willingly in those circumstances.

THE COMPREHENSIVE PLAN OF ACTION

This agreement, brokered by the U.N.H.C.R., has been in existence for six years. It had five main components.

1. Efforts were to be made to ensure that people did not leave Vietnam. Although 1989 was a very heavy year for arrivals in the region, by 30th November 1994 only 460 boat people had arrived in Hong Kong since 1st January 1992. [That number clearly excludes the ECVIIs who had arrived in 1993 and who were refused screening.] 42 had arrived in Indonesia, 24 had arrived in Thailand and 6 had arrived in the Philippines since 1st January 1992. Only one Vietnamese boat person had arrived in Malaysia since the end of 1990. Unless the picture has drastically changed over the past eight months - and surely we should have heard about it, (UNHCR figures)- the flow of boat people has slowed to a trickle.

This part of the C.P.A. has been successful.

2. Maintenance of first asylum. Most of the South East Asian countries have stopped accepting boat people, and a C.P.A. agreement of 15th February 1994 gave the countries leeway to make such a decision for themselves. Popular opinion in Hong Kong would be in favour of cessation of first asylum.

The legal position is anomalous. Special legislation was passed in relation to the boat people, to enable their claims for asylum to be determined. No other nationality is able to make such a claim in Hong Kong. This is because the United Kingdom never extended the Refugee Convention of 1951 nor the protocol of 1967 to Hong Kong, which is a British colony. Equally, the United Kingdom refuses to take responsibility for those people who do claim asylum in the Crown Colony. First asylum for the Vietnamese remains in Hong Kong, though many arrivals are persuaded to "volunteer" to return without screening, and I only know of one arriving family found to be refugees in the past three years.

This part of the C.P.A. is therefore coming to an end.

3. Status determination. See details herein, and Dan Wolf's submission. Screening is virtually over, units disbanded and personnel dispersed. In those few cases in which we have been able to achieve a "re-screening" the result has been as bad as before. There is no possibility of first asylum countries rescreening boat people.

This part of the C.P.A. is at an end, though it could not be dubbed successful.

4. Repatriation of those screened out as non refugees. This has been fraught with difficulties. In the first place, for Hong Kong, the decision to screen was made unilaterally on 15th June

1988. The relevant section of the legislation reads that they are detained pending determination of their status, and thereafter pending their removal. No effort had been made to arrange the fate of those screened out.

On 8th July 1988 it was announced that Hong Kong would negotiate directly with Vietnam about repatriation. This indicates that U.N.H.C.R. and other interested parties were not prepared to participate. Subsequent talks in Vietnam centred on resumption of foreign aid. 26th November 1988 it was announced that the return of 445 volunteers would be delayed. On 14th January 1989 it was reported that Hanoi had accepted 99 boat people for return. On 10th February 1989 a delegation arrived from Vietnam to issue travel documents to volunteers. On 2nd March 1989 75 formed the first batch of voluntary returnees. What happened to the other 370? The next group to return was 68 people on 12th May 1989. That was a time of large numbers of arrivals in Hong Kong, 1989 seeing the largest number of arrivals since 1979. At the end of that year there were 55,728 boat people locked up in Hong Kong. Further talks went on during 1989, including the subject of forced repatriation. 121 returned voluntarily to Vietnam on 17th August 1989. Unless there were withdrawals from voluntary repatriation there must have been 179 people who were rejected for voluntary repatriation at that time. It is probable that during those months the people who had been screened out were illegally detained, because their detention became indefinite. There are people in that category now, because Vietnam rejects their application to return voluntarily. Following threats of legal action 125 people were released from detention last November (1994) because Vietnam rejected them. Some were rejected because they had no household registration (Vietnam had originally promised that everyone would get registration on return. That promise has been broken.) Some were not recognised as Vietnamese nationals. There are over 100 Taiwanese nationals, some Laotians, some Thais, who are not recognised by Vietnam. All of these have been screened out in Hong Kong. Likewise last summer 54 Cambodians, refugees in Vietnam, were screened out when they reached Hong Kong. Only after threats of legal action were they found, by U.N.H.C.R., to be refugees. They have been resettled in Australia. We understand that 400 Cambodians remain detained in Galang. U.N.H.C.R. must be prevailed upon to arrange their release and to negotiate their resettlement.

VOLUNTARY REPATRIATION

By 30 November 1994, 63,388 people had returned to Vietnam, most of them voluntarily. There have been fluctuations in the numbers of volunteers from the beginning of the program. This has been due to a variety of factors. The present slow down can be attributed in part to the proposed amendment in the U.S.A. People naturally want to see what happens. Apart from those mentioned above who have already been released there are hundreds more volunteers in Hong Kong whose return to Vietnam has not been accepted by the Vietnamese authorities. It also appears that anyone who left Vietnam prior to 16th June 1988 is regarded by Vietnamese authorities as a refugee, and therefore not to be accepted back to Vietnam - even if they arrived in Hong Kong after the cut off date. It is likewise arguable that anyone who left Vietnam prior to the commencement of the C.P.A.

R. KYLE HORST

R. Kyle Horst is Chief Operating Officer of World Vision International - Viet Nam, a part of World Vision International (WVI) which is carrying out humanitarian relief and development programs in Viet Nam, including projects which assist in the reintegration of returnees. In 1991-1993 he served as a monitoring officer with the United Nations High Commissioner for Refugees (UNHCR), the first to be based in Ho Chi Minh City, where he was responsible for establishing UNHCR's monitoring program for returnees in the southern half of Viet Nam.

Mr. Horst is one of only a handful of Americans who lived and worked in the Socialist Republic of Viet Nam prior to the adoption of the policies of "renovation" and "openness" in 1989: in 1984-1985 he served with the UNHCR Working Group in Ho Chi Minh City, which at that time represented the U.S. government in the UN-coordinated Orderly Departure Program, a program established to provide an alternative to clandestine and illegal departure from Viet Nam by boat. Over the past fifteen years he has worked in various capacities to assist in the resettlement, protection, legal emigration, repatriation, and reintegration of Vietnamese asylum seekers. He last visited asylum camps in the countries of Indonesia and Hong Kong in December 1994.

He is a graduate of the Pennsylvania State University, and works and lives in Ha-noi with his wife, a former Vietnamese refugee, and their four children.

TESTIMONY OF

R. KYLE HORST
CHIEF OPERATING OFFICER
WORLD VISION INTERNATIONAL-VIET NAM

BEFORE THE JOINT HEARING OF

U. S. HOUSE OF REPRESENTATIVES

COMMITTEE ON INTERNATIONAL RELATIONS

SUBCOMMITTEE ON ASIA AND THE PACIFIC
AND

SUBCOMMITTEE ON INTERNATIONAL OPERATIONS AND HUMAN RIGHTS

25 JULY 1995

Mr. Chairman, distinguished members, I am R. Kyle Horst, Chief Operating Officer of World Vision International - Viet Nam, a part of World Vision International (WVI) which is carrying out humanitarian relief and development programs in Viet Nam, including projects which assist in the reintegration of returnees. Prior to taking this assignment with World Vision I served as a repatriation officer with the United Nations High Commissioner for Refugees (UNHCR), where I was responsible for establishing UNHCR's monitoring program for returnees in the southern half of Viet Nam, those 26 provinces south of Quang Nam-Da Nang. Over the past fifteen years I have worked in various capacities to assist in the resettlement, protection, legal emigration, repatriation, and reintegration of Vietnamese asylum seekers. I last visited asylum camps in the countries of Indonesia and Hong Kong this past December.

World Vision worked extensively in southern Viet Nam for almost two decades prior to 1975, and returned and resumed its' humanitarian activities in the Socialist Republic of Viet Nam in the late 1980s. For the past three years we have carried out a collection of reintegration projects for persons repatriating to northern and central Viet Nam in Hai Phong, Thua Thien-Hue, and Quang Nam-Da Nang, three provinces which are among the half-dozen or so which have the greatest numbers of returnees. These projects are funded in large part by the U.S. Department of State's Bureau for Population, Refugees, and Migration (formerly

the Bureau for Refugee Programs), as well as by contributions from the World Vision national organizations in the United States, Hong Kong, Japan, and Taiwan. In keeping with World Vision's commitment to help "the poorest of the poor," our reintegration project sites and structures are designed to assist the most needy persons in any project location, a population of rural beneficiaries which is half returnees and half non-returnees. This formation is in keeping with the agreements worked out between the United States and Viet Nam in 1992 at the beginning of the US-funded reintegration assistance program.

Our experience carrying out reintegration projects in rural Viet Nam has been an encouraging and positive one. Reintegration projects carried out in the communities from which people left and to which they are returning provide important assistance which facilitates not only the reintegration of individual returnees, but also promotes the larger successes of the Comprehensive Plan of Action (CPA) in general and voluntary repatriation in specific. Like the per capita allowances provided to individual returnees by the UNHCR, reintegration projects provide an important incentive to return. But the benefit of reintegration projects goes beyond individual returnees, building good will among the local population and officials who perceive this assistance as being brought to their community by the returnees and the repatriation program. With the end of the large European Community (EC) and Nordic

Assistance to Returning Vietnamese (NARV) programs earlier this year and reductions in the allowances provided by UNHCR to individual returnees, ongoing reintegration programs carried out by international and US non-governmental organizations like those currently funded by the Department of State have taken on an increased importance.

The monitoring of returnees was conceived at the inception of the CPA as exclusively the responsibility of UNHCR, supplemented by the efforts of those resettlement and first asylum countries with the largest interests in the success of the voluntary repatriation program. The first UNHCR officer tasked specifically to monitor returnees arrived in Ha-noi in mid-1990, and additional officers based in Ho Chi Minh City arrived in late 1991. At present there are six UNHCR officers in Viet Nam whose primary responsibility is returnee monitoring, most of whom speak Vietnamese and can conduct monitoring interviews without having to rely on an interpreter. Their function is as it was five years ago: to visit returnees in their homes and report on their progress in restarting their lives, specifically as regards Viet Nam's commitments under the CPA to not prosecute them for the criminal offense of illegal departure, to restore their registered legal residence and ordinary civil rights and obligations, and to provide normal and unimpeded access to employment, education, and social services.

Even if judged by statistics alone, UNHCR's monitoring accomplishments in Viet Nam to date are impressive: about one-fourth of the more than 73,000 returnees have been met and interviewed by a UNHCR officer. More importantly, there is nearly full coverage of repatriation locales at the level of "district," a Vietnamese administrative unit which corresponds roughly to a "county" in the United States. This approach, implemented in 1991 in southern Viet Nam and later extended to the whole country, means that almost all of the more than 200 of Viet Nam's 600 districts which have at least one returnee have been visited at least once by a UNHCR monitoring mission; it is predicated on the fact that the conditions and situation of returnees in any given locale are similar, and that registering a monitoring presence in all locales is more important than simply increasing the gross numbers of returnees visited.

But monitoring has grown to become something much more than just a reporting and verification done by UNHCR. The commencement of the EC, NARV, and other NGO reintegration programs in 1991-1992 established a new and additional type of interaction between members of the international community and the returnees and their communities, and on-site contact with returnees in their homes and workplaces was no longer simply the province of UNHCR officers. The numbers of returnees grew, and so did the number and scope of programs designed to assist them. Interest in the progress of the repatriation and reintegration components of the

CPA drew the attention of the international media and of human rights and advocacy organizations as well, further diversifying the field of agencies and individuals to the point that it is today: access to individual returnees - a concern for UNHCR and many of the strongest supporters of the CPA just five years ago - is accepted by all if not taken for granted, and the average returnee has a number of options available to them should they wish to raise a question or register a concern. The free and unfettered exchange between returnees in those districts where World Vision does reintegration projects and our expatriate staff who manage and monitor them is just one example of this.

By any standard, the successes of voluntary repatriation, reintegration, and monitoring well exceed the expectations of the international community six years ago when the CPA was established. The proof that the relevant parties to the CPA, particularly Viet Nam, have fulfilled their commitments to enable the return in safety and dignity of those asylum-seekers who see no future anywhere else is the fact that for every person who remains in a camp or holding center in Southeast Asia, two have already returned home. The approaches taken to reintegration and monitoring have proved to be correct and successful.

This is not to say that reintegration assistance and the monitoring of returnees should be diminished: to the contrary, in this final phase of the CPA, monitoring and reintegration efforts need to be not merely affirmed but strengthened and redoubled. Both have served as an essential incentive to return and can continue to do so; any initiative now which would limit or reduce repatriation or reintegration assistance would be counter-productive and likely impede, rather than hasten, an acceptable and appropriate end to the CPA. As regards monitoring, it is my conviction that the role of UNHCR remains essential, specifically in its' ability to make interventions with local officials responsible for facilitating the reintegration of returnees in their communities. Such intervention-oriented monitoring provides for returnees, their neighbors and community members, and low-level Vietnamese officials an informal but important line of accountability to the CPA policy commitments made by the central government. Earlier this month a mission from UNHCR's Division of International Protection traveled to Viet Nam to assess the effectiveness of monitoring; their report to the High Commissioner no doubt will make suggestions for strengthening and ensuring the continued effectiveness of the UNHCR role.

Mr. Chairman, the leadership of the United States has been the fundamental basis for the international humanitarian effort to assist Vietnamese refugees over the past two decades, and it

remains a critical factor in this final phase of the Comprehensive Plan of Action. Various initiatives have been proposed and discussed over the past eighteen months to bring an acceptable and appropriate end to the CPA and specifically to forestall the forced repatriation of large numbers of asylum-seekers. Events since the sixth meeting of the CPA Steering Committee in mid-March have served only to highlight the limitations of UNHCR's role in the asylum countries given the present situation and the need for leadership and initiative from elsewhere. At the very minimum, US criteria for the Orderly Departure Program (ODP), which have been significantly restricted over the past few years, should be revised and restored to what they were in the early 1990s so as to provide the greatest possible incentive to asylum-seekers who were not screened in but who have the closest and most compelling ties to the United States. Hundreds of returnees have already emigrated to the US in this fashion, and the mechanism for the processing in Viet Nam of repatriated persons for emigration via ODP is in place and functioning.

Any new initiative that is proposed should build on the successes to date of voluntary repatriation and affirm the inevitability of return to Viet Nam for the vast majority of those who remain in camps. More than 73,000 people have accepted the assurances of the international community via the CPA that for those who are not refugees return home is the only option; our obligation

extends to them as it does to those who have not chosen to return. It is our conviction that any further reconsideration for resettlement of persons who may be identified as wrongly screened out must take place in the context of return to Viet Nam. But with or without a new initiative to address those who have not yet chosen to return, the United States should continue and extend its' support both for the monitoring of returnees and for funding of reintegration assistance projects in Viet Nam, so as to as maintain these basic and essential incentives to return.

Thank you, Mr. Chairman.

DR. NGUYEN DINH THANG, EXECUTIVE DIRECTOR OF BOAT PEOPLE S.O.S.

Born in 1958 in Saigon, Dr. Thang grew up in South Vietnam. After the fall of Saigon, he entered college, majoring in economics and political sciences. In 1978, he escaped by boat to Malaysia. Seven months later he came to the United States. He obtained his PhD in Mechanical Engineering from Virginia Tech in 1986. Since then he has worked as a scientist at the David Taylor Naval Research Lab.

Dr. Thang has been involved in community activities since his arrival in the United States. From 1980 to 1985, he served as Chief Editor of Xac-Dinh magazine. In 1986, he founded a college entrance tutoring program for newcomers. In 1988, he joined Boat People S.O.S. (BPSOS) as director of its private sponsorship program. In 1990 he became the Executive Director of BPSOS. In the same year, he co-founded Legal Assistance for Vietnamese Asylum Seekers (LAVAS) and served as its first chairman. In those capacities, he has visited first asylum camps in Hong Kong, Thailand, Indonesia, Malaysia and the Philippines and has worked on several hundred refugee cases.

**Written Statement of Dr. Nguyen Dinh Thang
Executive Director of Boat People S.O.S.
Before the International Relations Subcommittee
on International Operations and Human Rights**

July 25, 1995

Mr. Chairman and members of the subcommittee,

Two weeks ago at the Foreign Press Center, Assistant Secretary of State Winston Lord had the following to say about repatriation: *"So far I must say that there has been no evidence of any mistreatment of boat people who have gone back."* This is also the position of the UNHCR and a number of NGOs. Some US and UNHCR officials have gone as far as implying that therefore everyone in the camps can return in safety.

While I believe persecuting the average returnees is not in the interest of nor is it the policy of the Vietnamese Government, I find it preposterous to ignore the reality that the Communist regime in Vietnam remains a very repressive one. The Government of Vietnam has not abandoned its policy of repressing so called "reactionary" elements. Last month, two prominent former Communists were imprisoned for simply suggesting to the government to hold free election and to obey its own laws.

There are many asylum seekers in the camps who belong to this black-listed group of "reactionaries" and who had been severely persecuted by the government because of their family backgrounds, their political opinions or their religious beliefs and practices. They, however, have been wrongly denied refugee status, because of the serious mistakes and abuses in screening. This group of at-risk refugees have strong reasons to fear persecution if repatriated.

Virtually all of them are still in the camps, refusing to repatriate. Some have even committed suicide so as to escape deportation. Comparing this black-listed group with the 72,000 who have returned is to compare oranges with apples.

Even with regard to this latter group of 72,000 returnees, there are good reasons to believe that Mr. Lord had not been fully and accurately informed when he made the above assertion. I am aware of several instances of harassment, mistreatment and imprisonment of returnees, mostly through intercepted UNHCR documents.

I would like to cite three examples, without disclosing names to protect the safety of those involved.

A. Case 1 voluntarily returned to Vietnam in 1989 at the UNHCR's promise of protection. He was immediately sent to prison for a previous escape attempt. Case 1's brother remained in Hong Kong and reported the incident in his refugee claims. The Hong Kong Government admonished the UNHCR for having allowed such damaging allegation to be made without thorough verification. The UNHCR Chief of Mission replied: *"I am personally familiar with this case precisely because of its potential implications for the voluntary repatriation programme and can assure you that the relevant statements in the submission correctly reflect facts which had indeed been ascertained by the UNHCR."* (Letter dated March 21, 1991) Case 1's brother was subsequently granted refugee status.

In June 1992, I personally asked a State Department official who was on a mission to Vietnam to look into this and other cases of returnees who had faced serious problems in Vietnam. Back in the US, this official reported that he had not been able to meet any of those

returnees. He specifically reported that, according to the UNHCR, Case 1 had been released after 15 months in prison. Case 1 had then vanished from home. Even his mother did not know his whereabouts. The UNHCR speculated that Case 1 had escaped back to Hong Kong. But there has been no confirmation of that.

B. Case 2 returned to Vietnam from Thailand in 1993. He was immediately arrested and sent to prison for a previous escape attempt which he helped organize in 1989. His wife wrote back to the camp asking intervention from the UNHCR. Her call for help has gone unanswered thus far. Case 2 is still in prison.

When a delegation of American NGOs visited Vietnam late last year, I submitted to them a number of "sensitive" cases, including this one with a request for investigation. This delegation, however, decided not to look into any of these cases, reportedly because they did not believe access would be allowed and feared that outside attention could further jeopardize these returnees.

C. Case 3 was forcibly returned to Vietnam in September 1994 from Hong Kong. David Ireland, a lawyer with Legal Assistance for Vietnamese Asylum Seekers, made a surprise visit to him six weeks later. Following is the report of Mr. Ireland.

"Case 3 was stunned when I appeared on his doorstep and clearly very worried about my presence. However, he quickly admitted me into his home and we spent the next two hours discussing his situation.

After landing in Ha Noi, Case 3 was brought to a small room with three Public Security Officers. For the next three days, he underwent intense interrogation. The PSO's were intimidating and often threatening. Almost immediately, the PSO's produced a file containing information on Case 3. The file included several articles written by Case 3 and published in overseas Vietnamese newspapers and magazines...

After questioning him about his personal activities, the officials focused on others in the camps. They were particularly interested in the various anti-communist organizations and its leaders. The security forces in Vietnam are quite familiar with camp activities and must be receiving information directly from the camps.

At the conclusion of the interrogation, Case 3 was told that he should consider that day as 'day zero' and not to have any contact with people he met in Hong Kong."

Mr. Ireland then noted that Case 3 was allowed to work, but was explicitly told that he could not leave Ha Noi without the permission of the authorities. He had not been visited by the UNHCR in the six weeks since his return. Indeed, it is not the UNHCR's mandate to monitor the safety of those forcibly repatriated.

One might argue that the intense interrogation, and the restriction of Case 3's freedom of movement and association do not amount to persecution. However, it is pretty clear that over his head hangs the Damocles' sword.

The Vietnamese Security Police has meticulously compiled thorough dossiers, including pictures, of people politically active in each camp. Applicants for voluntary repatriation are often asked to report their own activities and inform on others in the camps during their interview with the Vietnamese delegation before repatriation. Once in Vietnam, they were again debriefed by the Security Police for two to three days in a transit camp. There are reasons to believe that the Vietnamese security police has informants in the camps, who provide up-to-date information on various aspects of camp activities.

I would like to quote from a letter written by Case 4--who had signed up for repatriation and had been moved to the Lo Wu transit center in Hong Kong--to her brother at Whitehead Detention Centre also in Hong Kong:

"On April 15, I was interviewed by the head of the Vietnamese delegation. He asked me which camp and section I lived in. I told him Section 15B. He immediately asked me whether Mr. K. is the elected head of the section. He then asked me about people in the section belonging to the Anti-Communist Coalition. I said I did not know anyone. He told me that's impossible and described in detail the activities of that coalition. He also cited names. I was really frightened. He even knew about the death of Mr. Sinh which just occurred the day before."

Intercepted documents of the UNHCR shows that this agency is aware of many incidents of harassment, mistreatment or imprisonment of returnees. However, I am afraid that the same standards used in screening, which has been described by Mr. Daniel Wolf, have also been applied to the monitoring of returnees. According to these standards, activities that go against the government's national policy are prosecutable crimes. Similarly, escaping persecution is also a prosecutable crime. Incidents of mistreatment and persecution are thus dismissed as prosecution against criminal activities and reported as such.

For instance, the UNHCR is well aware of several members of a Buddhist Sect being severely mistreated upon return. Some have renounced their faith under duress. Others have gone into hiding to keep their religious practices. When inquired about these cases, the UNHCR monitoring officer in Ha Noi explained that this Buddhist Sect, while a religious faith, is also highly political and its leader outspoken and critical of the Vietnamese Government. He concluded that the laws of the country must be respected particularly with regard to national interest.

In cases, like Case 1, where returnees are imprisoned for past escape attempts or for organizing their own escapes, the UNHCR distinguishes them away as prosecution. When one of these cases was brought to the UNHCR's attention, Dr. Alexander Casella, at the time Special Advisor in charge of the repatriation program, responded that *"it is universally recognized that organisers should be prosecuted, and I see no reason why we should ask the Vietnamese to commute his sentence."* The problem is, many refugees have to organize their own escapes.

In its Memorandum of Understanding on Repatriation signed with the UNHCR in 1989, Vietnam has only agreed not to punish returnees for their very last escape attempts. It does not exempt returnees from punishment for other escape attempts, for organizing their own escapes, or for "crimes"--whatever that means--committed prior to their escapes.

I am also aware of several returnees, having been harassed and mistreated by the local authorities, who have written to their friends and relatives in the camps to advise the latter not to return. Such letters, if publicized, will irreparably damage the voluntary repatriation program.

Following are excerpts from a letter dated March 25, 1995, of Case 5, a returnee from Indonesia, to his brother in the US. In that letter he mentioned about another brother T. still in Indonesia.

"... It has been a month since I returned to Vietnam. So many things have happened to me. I feel I need to write to you immediately and ask you to tell T. not to return to Vietnam for any reason. He will be arrested."

During my two days at the Thu Duc transit center, I was interrogated by the authorities. After going through my biodata, they then asked me why T. did not return. I told them that he was seriously ill and would not be able to endure the repatriation flight. They let me go home.

The next day, I was again summoned to the police station. My interrogator was new in the area, and so I had hoped he would not know much about our family background. But it

turned out he knew everything, as if he had been with us in the camp all along. He scrutinized me about T.'s activities in the camp. He also knows that our brother H. was executed for anti-government activities in 1976.

He asked me my motive for returning to Vietnam, insinuating that I could not be trusted. I was so frightened and so upset by his mentioning the tragic death of our brother H.

Later I found out that a neighbor, who also recently returned from Indonesia, had reported everything about us to the local authorities.

Three days later, I was again summoned to the police station for another round of interrogation. This time the interrogator focused on the organizations which T. belong to in the camp. The interrogation was very intense.

A few days ago, I was again interrogated. Please tell T. that he should not return."

T., the brother mentioned in this letter, has been imprisoned by the Indonesian authorities for having actively opposed repatriation. Case 5 signed up for repatriation because the Indonesian authorities promised that if he did so, his brother would be released. T. is still in prison in Indonesia. I have written several letters to the UNHCR asking for intervention. And the UNHCR has replied that there is not much they can do, which is probably true. But in that case, I have to wonder what the UNHCR can do for T. if he is in a Vietnamese prison instead.

There is a need to thoroughly verify claims about the quality of the UNHCR's repatriation program, the same way we treat their claims about the screening program.

I would like to suggest that the State Department and the US Congress look into the following three areas.

1. Despite claims to the contrary, the UNHCR has visited only 20% of all returnees and is therefore not in the position to say with certainty that no one among the remaining 80% is persecuted or mistreated. Furthermore, the UNHCR does not monitor those who are forcibly repatriated. Case 3, for instance, is not under the protection of the UNHCR at all.

2. The majority of the UNHCR monitoring staff are hired locally. In screening, locally hired staff is a factor contributing to the problem of rampant corruption and other problems caused by conflicts of interests. There are reasons to question the effectiveness and impartiality of locally hired monitoring staff in Vietnam.

3. The European Community's reintegration program, by far the principal reintegration program for returnees, has been hailed by some NGOs and the UNHCR as a resounding success. However, a Danish researcher hired by EC to evaluate its own program has reported serious mismanagement and declared it a big failure. A State Department official came to the same conclusion, in private, after his visit to Vietnam last year. The EC program was discontinued last November.

In screening, the UNHCR has not been forthcoming in acknowledging the problems and in remedying their consequences because they fear that such actions would have negative effects on repatriation. I would think that the UNHCR, for the same reason, would be even less forthcoming in acknowledging problems in the repatriation program itself.

In summary, Vietnam has changed for the better but its Communist regime remains repressive. There is a large number of asylum seekers in the camps who are at high risk of being persecuted if repatriated. They cannot return in safety and will continue to resist repatriation till the end, even at the cost of more violence, bloodshed and losses of their own lives. Even among those with much less fear of persecution and who have returned, there are several incidents of mistreatment. Some of those incidents have been reported to the UNHCR and to the State Department. Claims that there is no such incident are simply not accurate.

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Founded in 1932 as
The U.S. Experiment in
International Living

Claude DeL. Pepin is currently Vice-President for Organizational Development and Strategic Planning at World Learning (founded as The U.S. Experiment in International Living in 1932), a multifaceted international education and overseas development organization. In addition to his executive Organizational Development and Planning functions since 1980, he has been World Learning's Managing Director of the Southeast Asia Refugee Training Program, implemented through a Consortium with other Non-Governmental Organizations (NGO). Funded by the United Nations and the U.S. Government, this program has trained more than 200,000 refugees to begin new lives in United States communities. He helped initiate World Learning's International Development and Training Division which now provides, in multiple locations around the world, individual and NGO capacity building programs in the fields of community development, education, training, micro-business enterprise, democratization, and civil society. He has served on the graduate faculty of the School for International Training teaching intercultural management and communications, community development planning, and global issues education.

During his twenty-one-year tenure at World Learning and its School for International Training, he has consulted with a variety of private, nonprofit organizations in the area of strategic planning, organizational development and management training, and Intercultural skill building.

Mr. Pepin studied mathematics and physics as an undergraduate at Northeastern University, was a Peace Corps volunteer in The Gambia, West Africa, teaching mathematics, and did graduate study at the School for International Training in Intercultural Management. He has worked in private industry at Lockheed Missiles and Space Company and Avco Research Laboratories, and has directed Peace Corps training projects in the U.S. and Asia.

Claude DeL. Pepin

CONSORTIUM

Training and Assistance Programs

TESTIMONY PRESENTED TO

House Committee on International Relations

Asia and Pacific Sub-Committee

and

International Operation and Human Rights
Sub-Committee

25 July 1995

On Behalf of The Consortium
Presented by Claude DeL. Pepin,
Vice-President, World Learning



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CONGRESSIONAL TESTIMONY

Chairman Smith, Chairman Bereuter, and members of the sub-committees. My name is Claude PEPIN. I represent the CONSORTIUM which is a collaboration of three long-standing private voluntary organizations: Save the Children U.S. based in Westport Connecticut, World Education based in Boston, Massachusetts, and World Learning, founded as The Experiment in International Living, based in Brattleboro, Vermont.

I have been a headquarters Director of the CONSORTIUM since 1980. I have made numerous visits to the region and supervise our field directors in Vietnam, the Lao People's Democratic Republic, Thailand, and Cambodia in our delivery of training and assistance programs for refugees and repatriates.

In our view, based on our sixteen years in the field working toward a successful conclusion to the Indochinese refugee situation, U.S. legislation and policy must recognize the progress made under the CPA, acknowledge and address the flaws in its implementation, and take into account the current realities both in the camps and in the countries of origin. The state of mind of those remaining in camps and, equally important, those who have chosen voluntary repatriation, are critical variables in shaping policy and programs which will avert more violence and provide practical, realistic progress.

Our testimony will focus on two points:

First, the Consortium's experience on the ground has shown that, although not perfect, repatriation is working for those who have chosen to return; we firmly believe that support for reintegration

should not be linked to the resolution of issues related to the screening process;

Second, it will give our perspective, based on our experience, on the implications of HR 1561 on those individuals who have chosen to return, and on the principles of the CPA.

The Consortium was formed in 1979 in response to the Indochinese refugee crisis. Since that time we have been delivering U.S. predeparture resettlement training in Thailand through February 1995, and in Indonesia through 1986, where we have trained more than 240,000 Vietnamese, Cambodian and Lao refugees in English language, U.S. cultural orientation, pre-employment skills and preparation for U.S. secondary schools. Shortly following the implementation of the Comprehensive Plan of Action, the Consortium began work in Vietnam and the Lao People's Democratic Republic, providing reintegration assistance to voluntary returnees. In Cambodia, with UNICEF assistance, we provide education programs in three provinces. We have four to six expatriate staff in each country, many of whom speak the local language, and who have been on the ground working with repatriates, local government officials, and local populations to provide development training programs which help repatriates and their families to re-establish themselves in their countries of origin.

Specifically, in Vietnam we are currently providing services to assist returnees to achieve employment through vocational training and/or group guaranteed lending programs which capitalize individual businesses. Since the program began in 1993, we have worked in nine provinces in the Mekong Delta reaching over 29,000 beneficiaries composed of returnees and their families. In a survey conducted by the Consortium in Vietnam for our credit program between April 1994 and March 1995, we found that the average income per returnee household per month almost doubled as a result of the loans provided. The repayment rate was 98%.

Reintegration with assistance is working, and can continue to be successful.

This support for reintegration needs to not only be maintained, but expanded to provide support to returnees in a broader geographic area. To that end, the Consortium has initial signs from the government that it would welcome our adding seven additional provinces, enabling us to reach individuals not only throughout the Delta, but also parts of the central region. Repatriation is a crucial element to any solution to the current situation, and must be supported.

As I am sure many of you are aware from information we have provided for reports from Congressional delegations and other PVO/NGOs, we have not experienced any cases of mistreatment or discrimination on the part of the Vietnamese government toward any of the returnees with whom we have worked. Our staff has not been approached by returnees who have been screened out indicating that they should have been screened in. That is not to say that such cases do not exist in the camps, or in Vietnam, but we have not come across them directly. Since 1993, we have had in place an expatriate staff member fluent in Vietnamese who also worked for us in our program in the camp in Galang, Indonesia. He has had ample opportunity for individual contact with numerous returnees. He has not reported any cases of discrimination.

Our experience working in Galang during the screening process did not include direct involvement with screening, however, our staff at the time gave verbal reports of abuses of power which resulted in individuals whose cases might have been screened out getting screened in. As one of very few US NGOs with expatriate staff living on Galang we did not hear of cases being screened out who should have been screened in. Again, that is not to say that no such cases exist, only that we did not hear of them. These statements regarding the screening process are not meant to draw conclusions, but rather

to state the nature of our contact with those who have been through it.

In HR 1561 the legislation seeks to correct flaws in the screening process. However, we believe successful legislation will need to recognize broader factors related to reintegration. The current concept of a U.S. led and supported "expanded" track II processing in Vietnam, which we understand, as a concept, is supported by the UNHCR, may be the most viable solution at this time. There are implementation issues which must be resolved prior to adopting the track II option. However, these should not prevent the establishment of sound policy directions. Just as flaws in the implementation of screening should not cause us to reverse or undermine successful aspects of US policy, nor should challenges in implementing an expanded track II prevent us from establishing policies which best reflect the United States' obligations, past commitments, and current and future interests.

Currently, the Consortium is planning responses to the Vietnamese Government to expand operations further in order to provide services to more returnees in a broader geographic area. Supported reintegration programs for those who have chosen to return are an essential element of a humane conclusion to the era of refugees in Indochina.

Safe, monitored, and supported return can not be jeopardized by creating a policy which links efforts to correct perceived flaws in the screening process to the rescission of funding for reintegration. Reintegration support is critical to the many who will still return to Vietnam.

In order to achieve the original goals of the CPA, policies and programs must simultaneously consider in as humanitarian a way as possible:

- strategies for emptying the first asylum camps in the region;
- procedures for correcting documented flaws in the screening process;
- continued protection and encouragement, and increased support for those who have chosen to repatriate, as well as for those who will eventually return;
- continued progress in the bilateral and multilateral relations in the region; and
- the provision of clear policy guidance and programmatic linkages for the existing ODP program currently operating in Vietnam.

The provisions of HR 1561 that call for rescreening and a halt to U.S. support for reintegration assistance would be counterproductive to bringing about a viable overall solution. It would undermine progress which has been made in the successful repatriation to Vietnam (and the Lao PDR as well) by removing protection and support to those who have chosen to return, and further reducing the possibility of others making a similar choice. It raises questions as to whether some of those who made the choice to repatriate under policies shaped and supported by the U.S. would attempt to leave again or request that their cases be reopened. As we enter the era of normalization, it could negatively impact on the United States' ability to sustain bilateral relations in the region and may be interpreted by the Government of Vietnam that it has not acted in good faith in fulfilling its commitments to fair treatment of returnees.

Although the majority of this testimony is based on current issues related to the Vietnamese, we would also like to comment on, and distinguish those issues from, the ones related to Highland refugees in Thailand and the successful repatriation efforts in the Lao PDR.

Highlanders in the camps in Thailand are refugees, as opposed to screened out asylum seekers. The Royal Thai Government and the UNHCR have provided opportunities for resettlement and repatriation, yet many have still refused to make either choice. U.S. policy, with which the Consortium agrees, is to provide the option of supported choice for either repatriation or resettlement.

The repatriation program in the Lao PDR which the Consortium has been implementing with the UNHCR is progressing well and, as in the case of Vietnam, our Lao speaking expatriate staff have not seen or heard of any acts of discrimination on the part of the Lao government. Similar to the Vietnam situation, it would be very counterproductive for the U.S. (through) to halt assistance which provides reintegration support to those who choose to return.

Thank you Chairman Smith and Chairman Bereuter. We hope that this information, based on our on the ground experience, is of assistance to your sub-committees.

**SHEP LOWMAN, DIRECTOR, INTERNATIONAL REFUGEE AFFAIRS, UNITED STATES
CATHOLIC CONFERENCE REFUGEE AND MIGRATION SERVICES**

- 1966 - 1970** SERVED IN VIETNAM ON LOAN FROM DEPARTMENT OF STATE TO USAID
- 1974 - 1975** UNITED STATES EMBASSY SAIGON
- CHIEF, INTERNAL POLITICAL REPORTING UNIT
 - LEFT SAIGON APRIL 29, 1975 BY HELICOPTER
 - AWARDED THE DEPARTMENT OF STATE SUPERIOR HONOR AWARD FOR ASSISTING VIETNAMESE NATIONALS TO LEAVE THE COUNTRY DURING THE EVACUATION FROM SAIGON.
- 1975 - 1981** DEPARTMENT OF STATE BUREAU OF REFUGEE PROGRAMS.
- SERVED AS DEPUTY ASSISTANT SECRETARY OF STATE IN CHARGE OF DEVELOPMENT AND IMPLEMENTATION OF THE INDOCHINESE REFUGEE PROGRAM.
 - COORDINATED THE U.S. POSITION FOR THE GENEVA CONFERENCE IN JULY 1979 WHICH LEAD TO AN END OF THE BOAT CRISIS AND A DOUBLING OF VIETNAMESE RESETTLEMENT WORLDWIDE.
 - DEPARTMENT OF STATE SUPERIOR HONOR AWARD FOR CREATIVE MANAGEMENT RESPONSE TO THE VIETNAMESE BOAT CRISIS OF 1978-79.
- 1988** - RETIRED FROM THE SENIOR FOREIGN SERVICE. FEBRUARY, 1988; EXPOSED FATE OF MANY BOAT REFUGEES STRANDED ON THAI ISLANDS WITHOUT FOOD OR WATER.
- 1988 - 1989** - PRESIDENT AND EXECUTIVE DIRECTOR OF REFUGEES INTERNATIONAL. ATTENDED PRE-MEETINGS AND 1989 GENEVA CONFERENCE ON THE COMPREHENSIVE PLAN OF ACTION (CPA).
- 1991 - PRESENT** - DIRECTOR, INTERNATIONAL REFUGEE AFFAIRS, U.S. CATHOLIC CONFERENCE MIGRATION AND REFUGEE SERVICES (USCC)
- MANY TRIPS TO VISIT AND REPORT ON CONDITIONS IN SOUTHEAST ASIAN CAMPS.
 - ADVOCATE FOR MORE GENEROUS TREATMENT OF BOAT PEOPLE UNDER THE CPA.

TOWARDS AN HONORABLE AND HUMANE ENDING
TO THE INDOCHINESE REFUGEE PROGRAM

TESTIMONY OF

Mr. Shep Lowman, Director
International Refugee Affairs

United States Catholic Conference
Migration and Refugee Services

before the

Asian and Pacific Subcommittee
and the
International Operations and
Human Rights Subcommittee

of the

House International Relations Committee

July 25, 1995

Mr. Chairman,

I very much appreciate the opportunity to testify before this Committee today about the current situation in Southeast Asia with respect to the Indochinese refugees and about the important issue of how to go about bringing the Indochinese Refugee Program to an honorable and humane end.

Others will discuss today the details of the Comprehensive Plan of Action (CPA), including perceived deficiencies in camp conditions, in screening and in monitoring of those returning home to Vietnam. I agree that there have been some significant deficiencies in the implementation of the CPA but would like to concentrate my remarks on the options open to us at this time.

First, though, allow me to note that the Indochinese Refugee Program has been a remarkable success. It has been the largest resettlement program in United States history. Beginning during the last days of Saigon and continuing to this very day, we have brought to the haven of our shores those with whom we served and fought; well over one million of them. It has been a completely non-partisan effort, crossing party lines and gradations of political beliefs. Whatever one thought of American involvement in the Vietnam War, we have been unified in our desire to assist our Vietnamese friends and colleagues. The success of this program which has seen some two million Indochinese resettled worldwide, has been largely due to vigorous American leadership, especially during the early and crisis years of the program. It has been a triumphant humanitarian effort! All that remains is to end it properly - humanely and honorably - with full acknowledgment of the particular American concerns and commitment towards this population which has informed United States policy throughout the course of this program.

As you know, Mr. Chairman, the CPA was agreed upon in June 1989 in Geneva. It provided for the screening of the asylum seekers and the eventual return home of those found not to be refugees. Screening was to be done on the basis of the standard found in the 1951 Geneva Convention Relating to the Status of Refugees which accords refugee status to those found to have a "well founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion" if returned to their country of origin. I agree that there have been serious mistakes made in the screening but this standard and its interpretation has also been one of the principal problems for the United States in the implementation of the CPA.

Adjudicators of the host government in the countries of first asylum, who have dealt with cases of Vietnamese asylum seekers with politically sensitive backgrounds, have often concluded that, while such persons might have been at risk of persecution

if returned home in earlier years, conditions had so changed in Vietnam that they no longer had anything to fear. This was a point often strongly disputed by non-governmental organizations (NGOs) with long experience in Vietnam and with the Vietnamese refugee program. But whoever may be correct in that respect, two consequences grow from such an approach to these cases:

* First, persons in categories towards which the United States has long felt an obligation or special concern have been denied refugee status in the CPA screening and, under the rules of the CPA, the United States is not allowed access to such applicants for resettlement to this country even should it wish to offer such resettlement. This has created results which I believe were not foreseen at the time of the CPA agreement in 1989. Persons with years of service in the South Vietnamese military or civilian government and former Vietnamese employees of the United States government are being pressed - yes, forced - to return to Vietnam. The same is true for former re-education camp prisoners and religious and community leaders. There is no dispute that such persons are being returned, but the assertion is that they no longer have anything to fear. This was certainly not contemplated by the NGOs in 1989 when the CPA was negotiated. and I believe was not expected by the American delegation to the Geneva Conference.

* Second, many of those persons who are now being asked to return home believe, on the basis of their past experience, that they have great reason to fear such return. One can debate the justification for such a fear, but few observers would deny that that fear is real and strong. It is the basis for much of the violence of the resistance of the boat people to their return.

For the past two years, the NGOs have watched with growing alarm the gathering clash between the refugees and their host governments. Increasing pressure to return home has been put on those who have been screened out and denied refugee status. This is now nearly all of the Vietnamese asylum seekers remaining in the camps - some 42,000 of them. Privileges have been withdrawn and markets closed. Camp life has become increasingly prison like. The response of the boat people has been to resist in whatever way they could; demonstrations, petitions, violence, and often self-destructive acts; hunger strikes, self mutilations and even suicide. We have seen this growing and, as the proclaimed end of the CPA grows nearer and the gradually declining camps populations come ever nearer to the hard core of determined resisters, our fears of truly violent and explosive incidents has also grown. Voluntary repatriation has nearly come to a halt. Governments are increasingly contemplating the use of force to return the boat people home. We believe that time is growing short and that the United States needs to act now to defuse this issue - before it is too late.

All of us very much appreciate the efforts and commitment of the House International Relations Committee in seeking to address this issue through the CPA provisions of H.R.1561. However, while it may prove possible to successfully resolve this problem through legislative action, many believe that the best option would be an executive branch initiative if such an initiative could be forthcoming which would accommodate the concerns and goals of this committee.

There are a number of reasons for preferring such an executive branch initiative. One of the most important of these is the question of timing. The potential for violence in the camps is rising rapidly. Refugees see the possibility of resettlement to the United States. Host country governments feel a commitment to their plan to empty camps by the end of this year. This gap in expectations is extremely dangerous.

H.R.1561 has a number of provisions which will be debated. There is the possibility of a Presidential veto. Should H.R.1561 be defeated, the suggestion has been made that the CPA provisions might be attached to other legislation. Whatever the outcome of these various possibilities, there is likely to be considerable delay before the legislative issue is resolved. An executive branch initiative could move quickly to defuse the threat of violence in the camps and move towards a peaceful and humane end to the program. However, I stress that any executive branch initiative would have to be a serious one that was seen by the people in the refugee camps as agreed upon by both the Administration and the Congress. Otherwise, the refugees are quite aware that they have influential friends in the new congress and would seek to hold on as long as they could.

A second reason for preferring an executive branch initiative is that it could probably achieve a better definition of the categories of eligibility to be applied to such a program. It is understandable why H.R.1561 utilized the Lautenberg categories which already existed in the law. However, those categories are no longer fully relevant, with respect to the boat people in the camps, and an executive branch initiative could define categories of presumptive eligibility more precisely and probably somewhat more narrowly.

Finally, there is a real question whether H.R.1561, as presently written, could be implemented since host governments might well refuse to permit any rescreening in their camps. These governments want to see the refugee problem resolved but many fear rescreening in their territory could delay this process. Right or wrong, this perception is likely to cause the host governments to refuse to cooperate with the initiative described in H.R.1561. If the host countries refuse to permit a rescreening of the boat people in the camps, the only practical

alternative would be to offer access to an American immigration official for refugee status adjudication upon return to Vietnam to those boat people who request such an interview. As we read it, the present language of H.R.1561 would not permit such an initiative.

Of course, all of these problems could be addressed in the language of HR 1561 in conference and, failing an adequate Administration initiative, this may be advisable. It is our understanding, however, that serious consideration is being given by the Administration to such a proposal.

AN EXECUTIVE BRANCH INITIATIVE MAIN POINTS

To address the concerns of this committee, an executive branch initiative should have the following principal points:

- A presidential executive order would establish categories of persons which have suffered past persecution. I stress past persecution as opposed to future persecution as required by the Geneva standard used in CPA screening. This lesser standard would be seen as a final act of generosity and concern by the United States towards the boat people.
- Some categories would relate to former association with the U.S., persons with sensitive political backgrounds and religious leaders. Others would be descriptive in nature; specified time in re-education camps imprisonment for post 1975 political acts or banishment to New Economic Zones, the Vietnamese Gulag.
- Any person in the camps, requesting it, would be granted an interview with a U.S. official. This could be in the first asylum country, if permitted by the host government. In most first asylum countries, this is very unlikely. Otherwise interviews would take place in Vietnam.
- Applicants would be interviewed by American immigration officers for past persecution. Those found to fit the specified categories would be resettled to the United States. Others would be examined on the basis of their past history. If found to have suffered past persecution, they would be also resettled to the United States.
- If the interviews take place in Vietnam, applicants would return from the camps in a transit status, be interviewed within relatively short period of time, 8 - 10 days, and if found eligible they would be

processed out of Vietnam expeditiously. Ideally, a location should be sought in the region where approved candidates could go for the six or so weeks required for medical processing and sponsorship assurances.

-- Those found not eligible would move to the reintegration camps presently maintained by the Vietnamese government for the processing and orientation and return to their home villages of those coming home in the voluntary repatriation program. It is important that adjudications under this initiative take care to err on the generous side, but those returning home must be clearly informed that this is a possible consequence of their adjudication by the United States.

This proposal has been under consideration, within the community of interest on this issue, for some time now, Mr. Chairman, and a number of unanswered questions have been raised, and varying opinions expressed, many of which can only be resolved if a serious effort is made to implement such a proposal. Some of these questions are:

Will anybody go home?

-- One question asked is will anybody go home if such an offer is made? Some believe that the boat people have become so cynical that they would only accept resettlement direct from the camps. However, many asylum seekers were starting to sign-up for voluntary repatriation when H.R. 1561 came along. If seen as an agreed upon policy of both branches of the U.S. government, many boat people would respond to such an initiative.

Some in the favored categories would try first. They should be moved through the system as quickly as possible and, if it worked for them, this should be publicized and more would follow. Eventually, most of those in the favored categories would return. This would have several effects. It would remove camp leaders who have organized resistance to voluntary return in the past. It would create a momentum for return home. Many would eventually see return under such an initiative as the best of the bad options available to them and better than doing nothing.

Will the Vietnamese Government cooperate?

- There remains a question, of course, as to whether the Vietnamese government would permit a new special program which, while falling under the same management

structure as the Orderly Departure Program, would necessarily be implemented as a separate and distinct migration stream. However, while presenting some management challenges, there are also powerful incentives for the Vietnamese government to cooperate with such a proposal.

- These are, after all, Vietnamese citizens in the camps and the Vietnamese government cannot wish to see the cycle of violence in the camps that threatens if no action is taken.
- The Vietnamese government has cooperated in the implementation of the CPA and it seems likely that they would be prepared, to the extent possible, to accommodate their prospective new partners in ASEAN, if the ASEAN countries see such a proposal as helpful, as I expect they would.
- It is my personal view that the Vietnamese government would find it in their interest to cooperate in such a proposal if it were made. ..

Of course, in the case of all of these questions, we cannot know the final answers unless we make a serious effort to implement such a proposal. We can claim for the proposal neither perfection nor certainty. At the moment, we believe it is the best option on the table, that it is doable and that the downside of doing nothing will far exceed the cost of trying to implement such a proposal. It is our best effort to contribute to the resolution of the increasingly difficult and threatening situation in the camps of Southeast Asia.

March 16, 1995

Congressman Dana Rohrabacher
U.S. House of Representatives
2338 Rayburn House Office Building
Washington DC 20515-0545

Dear Congressman Rohrabacher:

On behalf of my entire family, I am writing to request your help in preventing the forced repatriation of my father-in-law Pham Van Bi who is an asylum seeker in Malaysia.

My father-in-law had to live constantly in hiding after 1975 to avoid arrest by the communist authorities because of his service in the intelligence department of South Vietnam. Despite his well-founded fear of persecution by the communists, his refugee status had been denied by the Malaysian authorities for lack of cash to bribe them.

Last year when I visited my father-in-law in Sungei Besi Camp, I was approached by the screening officer in charge of my father-in-law's case. He showed me my father-in-law's file and demanded U.S. \$8,000 in exchange for a positive screening decision. I paid him \$2,000, which was all I could afford. A few months later my father-in-law's appeal was denied. Recently, a Vietnamese "scout" of that officer approached me and suggested that I pay the rest for my father-in-law to be considered a refugee.

That is a large sum of money that my family cannot afford. Also, we are very much distressed by the thought of being involved in bribery. We therefore desperately need your help and intervention. I have proofs of the corruption of which I am a victim. These proofs will be submitted to your office if requested. Enclosed is my written testimony and the case summary of my father-in-law.

Your assistance can bring justice to my father-in-law and prevent his deportation to persecution in Vietnam. We look forward to your kind consideration of our request for assistance.

Sincerely,

Son Do

Son Do
7882 16th Street #D
Westminster CA 92683
tel: 714-898-4145

Affidavit of Mr. Son Dinh Do on Screening Corruption in Sungei Besi, Malaysia

My name is Son Dinh Do. I am a U.S. citizen currently residing at 7882 16th St., #D, Westminster, CA 92683. I am married in 1984 and have 4 children. I came to the U.S. in 1982 from Vietnam.

After 1975, the Fall of South Vietnam, I was a laborer and then served in the Army, which was assigned to Cambodia. In 1978, I escaped (AWOL) from the communist army because I did not want to serve in Cambodia. The security police was searching for me when I fled Vietnam, from Tay Ninh, by foot through Cambodia and finally, to Thailand. Living in the U.S. for 8 years, I became a naturalized citizen in 1990.

I became a victim of Malaysian corruption in January of 1994. My wife and I first visited Malaysia on January 8, 1994, in order to see my wife's father and his son, who are political asylees in Sungei Besi Camp. They have been detained in Sungei Besi since 1989. The name of my wife's father is Bi Van Pham (MC-556014, ID-168833). The son's name is Loc Vinh Huynh (MC-556004, ID-168823).

I met a military security guard at the refugee camp when I first visited the head office for clearance. The guard said that he could help my father and then he asked for my hotel's address. Later that night he visited my hotel and told me that it would cost \$8,000.00 U.S. dollars to help two people come to America. I responded that I did not have such a large amount. He suggested that I put a down payment of \$2,000.00 and then pay the balance once my two family members receive a favorable screening decision.

Before I turned over the down payment, the following day the guard took me to the home of a Malaysian officer by the name of Mohammed, I believe with a rank of major, who has the responsibility of screening asylum seekers. His house is located in a military compound with guards at the gate. Mohammed's house was full of asylum cases scattered on the floor and tables.

He asked for my father's and brother's names and pulled out their files. He promised to help their cases, but with compensation. I was very impressed with his authority since he has many files, including the two applications my family had sent from the U.S.

From the files, I could see that my father-in-law had failed screening since there was a mark on his application indicating such a decision. Mohammed said that he could reverse the decision and then showed me the procedure by suggesting that my wife write an appeal letter, requesting the review of the files for my father and his son. He instructed me to send the appeal to the National Task Force 7, the Asylum Appeal Authority in Kuala Lumpur. This letter would give him justification to pull the files and "review" them.

I did not give Mohammed the money at his house but promised to hand it over at the hotel. As scheduled later that night, another military guard came to my hotel room, in which I gave him the \$2,000.00 cash. I was able to secretly set up my camera-recorder to record about one minute of the cash transaction. The tape was not very clear because we were scared and my wife had to block the lens at times in her attempt to act naturally during the money exchange.

The military guard promised that around early February 1994 my father-in-law will receive a favorable screening decision and that, at that time, I could then come back to Malaysia to pay the rest of the balance, or \$6,000.00. The guard gave me his phone numbers as well as the numbers of the major, Mohammed. I flew back to the U.S. a few days later feeling happy that my family members have been saved.

In February 1994, I telephoned Mohammed twice but only left recorded messages on his answering machine. He never did call back. I also called the military guard. He told me that he does not know about the progress of the files or that the applications have received a favorable reconsideration. I then realized that I have been duped by these people, feeling helpless and hopeless half a continent away. My father-in-law later wrote my family inquiring about the status of his case. He wrote that he had not heard of anything from the Malaysian officials. This news confirmed to me once again that my family had been tricked by Mohammed and his lieutenants.

I have contacted many non-profit organizations for help in this case in order to expose the sham against desperate asylum seekers and their family members. I have retained most relevant addresses and phone numbers of those Malaysians who are involved in this case. I am prepared to testify to any authoritative agencies and bodies concerning this matter.

I am solely responsible for the statements made above and am willing to testify under oath about my case as well as my knowledge about this serious problem in Sungei Besi, Malaysia.

Son Dinh Do

Son Dinh Do

STATE OF CALIFORNIA)
) SS:
COUNTY OF ORANGE)

Before me Betty L. Hess
Notary Public in and for said County and State personally appeared Son Dinh Do and
acknowledged the execution of the foregoing instrument by and on behalf of himself, and who having
been duly sworn, stated that to the best of his knowledge and belief any representations therein are true.

WITNESS my hand and Notarial Seal this 24 day of January, 1995.

Betty L. Hess
Notary Public



PHAM VAN BI, MC 556.014

Asylum country
Refugee status

MALAYSIA
DENIED

Mr. Bi joined the Army of South Vietnam in 1954. In 1966, he was appointed Chief of Intelligence serving at the Commanding Office of the 25th Infantry Division. He successfully infiltrated enemy ranks and brought about the arrest of many communist agents. For these achievements he was awarded the Medal of Merits. After his retirement in 1973 at the rank of Master Sergeant, Mr. Bi continued to advise the government on intelligence matters.

In May 1975, Mr. Bi narrowly escaped arrest by the communists who surrounded his house. He left town and lived with a former mistress under a false identity. This mistress had given birth to his son Loc. Interrogated by the security police, his wife declared him missing in action.

Since 1981, he had to relocate several times. Each time he had to undergo the scrutiny of the new local authorities.

In 1984, his wife Nguyen Thi Soi and their children left Vietnam for the United States under the Orderly Departure Program. Mr. Bi could not join them as he had been declared missing in action. From the United States, his wife started channeling money to his mistress to support his life in hiding.

In September 1989, the security police came to his house and took picture of him, his mistress and their son. Soon after, Mr. Bi was summoned to the police station and told to truthfully report his pre-1975 activities. At the same time Mr. Bi was tipped by close friend that the security police had asked him about specific details of Mr. Bi's past. Fearing imminent arrest, Mr. Bi escaped with his son Loc from Vietnam and arrived in Malaysia.

A Humane End to the Indochinese Refugee Program

Proposal by Non-Government Organizations

Submitted for the Record at July 25 Joint Hearing
on Indochinese Refugees: Comprehensive Plan of Action

House Subcommittees on Asia and the Pacific and
International Operations and Human Rights

by Mr. Daniel Wolf
Legal Assistance for Vietnamese Asylum Seekers

A HUMANE END TO THE INDOCHINESE REFUGEE PROGRAM

This proposal represents an effort to bring the Comprehensive Plan of Action (CPA), and the Indochinese Refugee Program itself, to an appropriate and humane end without undue delay. Although this proposal can be seen as a purely American effort, implemented on a bilateral basis with Vietnam as a follow-on to the CPA, it is likely to encourage voluntary repatriation and surely would remove from the CPA equation a large number of those persons in the refugee camps in the region who are most likely to put up a determined resistance to a forcible return home. It would also provide a fitting solution for many of those who have suffered most, for those most likely to meet further problems upon their return home and for those whom the United States continues to have the greatest obligation to assist.

We believe that it is important to end this long standing program on a positive note. The program is inextricably linked to the United States experience in Vietnam. It has been by far the most important refugee program in American history. Of the nearly 2 million refugees admitted into the United States in the last twenty years, almost 1.2 million have come from Indochina. The United States has consistently taken the lead in this program and it has been a triumphant humanitarian adventure. It would be a tragedy to end it under a cloud of bitterness and pain. And, without a proposal of this nature, that clearly is how it will end! This was true before the recent passage of H.R. 1561 which included provisions on the CPA which gave the asylum seekers new hope, but it is doubly so now.

Following the March CPA Steering Committee Meeting in Geneva, camp conditions are worsening exponentially. Services are being radically cut; schools closed; tailoring and hair care closed; remittances stopped; family visitation halted; some mail services suspended; camp markets closed. As the camps become more and more prison like and the pressures increase, all of the self destructive acts of resistance which have already occurred over the last year will inevitably multiply. Yet, the logistics of the plan announced by the Steering Committee in March were simply not doable even before H.R. 1561 and the return of the boat people would almost surely have been prolonged through most of 1996. Now, without some new initiative, it is hard to predict when this program may be brought to an end or how that end may look.

This proposal will need significant high level support since it requires an adjustment of perspective in the U.S. bureaucracy; always difficult to achieve. However, it should not involve political or financial costs at all out of proportion to the

significant role the Indochinese refugee problem has played in United States refugee policy. Nor would it be inconsistent with the interests of our CPA partners or the UNHCR. The proposal would consist of the following elements:

I. An INS Interview In Vietnam

Persons returning, from the camps of Southeast Asia, would be given access to INS interviews in Vietnam. If granted refugee status, they would be provided expedited processing, possibly under the Orderly Departure Program (ODP), but quite possibly under an entirely separate arrangement. A major benefit of this proposal would be that certain categories of camp residents who feel very threatened by the idea of return to Vietnam would have a high degree of likelihood that they would be accepted by INS. For them to feel confidence in such a proposal, however, and for such a proposal to work, a Presidential Determination would be required to establish certain categories of persons who would be presumed to have suffered past persecution. These categories, such as former re-education camp prisoners, would also include those persons most likely to resist returning to Vietnam in the absence of such an offer. Their resistance, in turn, draws other camp residents into strikes, demonstrations and the like.

INS interviews would be offered to persons fitting the categories presumed to have suffered past persecution. In addition, however, we believe that an important contribution can be made to a humane and orderly end to the CPA by offering an INS interview in Vietnam to any person returning from the refugee camps of Southeast Asia or Hong Kong who requests such an interview prior to their departure from the first asylum country. Those with fewer qualifications for refugee status, or not fitting into these categories should also be given the opportunity to request an interview but should be clearly warned that their chances of rejection by INS would be much higher. A more inclusive interview policy would also address the problem of persons, who do not fit the categories in the Presidential Determination, but who hold on in the camps in the hope that their category will eventually be mentioned for special treatment.

Interviews would not be mandatory but would be available if requested by the asylum seeker before his/her return to Vietnam. Interview dates could be scheduled in advance of return if the request is made in a timely manner. While significant additional U.S. personnel resources would be needed to implement this program, it would be a modest requirement in terms of the overall program and would be compensated by savings in other CPA costs; especially, the resulting care and maintenance costs if the program continues on for a longer time. To discourage undue delay, a deadline might be set, by which time a camp resident would be expected to have signed up for voluntary repatriation and indicated a desire for an INS interview upon their arrival in Vietnam. However, deadlines have a habit of passing unmet when the incentive is still needed and such a device might best be avoided until it appears that it is

really necessary.

Why Interview?

Even though cautioned about their prospects for success, considerable numbers of those not benefitting from presumptive categories may be expected to request interviews and even to move up the date of their return home for this purpose. Indeed, one of the practical advantages of an inclusive interview policy is that it can be expected to contribute significantly to the voluntary return program while, also, offering a real possibility of relief to at least some of the screened-out asylum seekers. A combination of the following factors will be influencing the returnees:

- Many believe their case to be unique and think that, given an opportunity to talk to INS, they would be accepted. With adequate warning about their chances, they should be allowed this opportunity.
- Some who are ready to go home, but cannot bring themselves to apply for voluntary repatriation, will accept an INS interview, in which they have little confidence of success, as a face saving solution, both with themselves and their families.
- Some will accept an interview and return home simply as a positive effort, and the only alternative open to them to doing nothing, in a situation increasingly described to them as hopeless.

It is, of course, understood that not everyone will accept such an offer and the mistrust and paranoia among the asylum seekers is so great that initially there may be considerable hesitation even among those who fit the favored categories. However, it is near certain that some will try. When they do, if they are approved and processed expeditiously to the United States, this will become known and the likelihood that others in the favored categories will follow. This, in turn, both reduces the leadership in the camps to organizer resistance to return and creates a momentum which is likely to carry others along who do not fit the categories. It is true that Hong Kong, with its heavy concentration of northerners, is likely to benefit least from this proposal. But, even in Hong Kong over one quarter of the population is made up of southerners. And there are doubtless many northerners who will believe that they have a special case to make.

Apart from the positive effects of encouraging voluntary repatriation and bringing a peaceful end to this increasingly dangerous situation, there are additional justifications for such interviews in Vietnam. There has been wide-spread criticism of the CPA refugee status adjudications by outside observers, including references to egregiously, wrongly decided cases. Without deciding the question of the validity of the screening process as a whole, it is certainly true that the national authorities in the host

countries in Southeast Asia approached the adjudication process from a different perspective than that commonly held in the United States. As political and trade ties have grown between the ASEAN states and Vietnam, there has been a natural tendency to look for, and find, favorable domestic political developments in Vietnam.

Unfortunately, those who have been screened out under this process, include many with U.S. ties who have spent years in the camps, living under extremely difficult conditions. They have left their homes and held out in the camps in the expectation that they would eventually be permitted to go to the United States; an expectation that was a reasonable one until the rules changed and it became clear that a far more restrictive standard was to be applied. From the U.S. perspective, there remains an obligation to assist those with whom the United States was closely involved. Therefore, it seems both practical and just to give those that request it one last look from the more sympathetic and generous perspective of an American adjudicator and to provide them an interview within that framework.

Fortunately, unlike the standard found in the 1951 Geneva Convention Relating to the Status of Refugees which was applied in the CPA screening process, the U.S. Refugee Act of 1980 is somewhat more flexible and accords refugee status to those outside of their native land on the sole basis of whether or not they have suffered past persecution without requiring that they demonstrate a well-founded fear of persecution in the future.

Under 8 USC 1101(a)(42) (Appendix A), a refugee is a person outside of his own country or his country of habitual residence who cannot return due to "persecution or a well founded fear of persecution". This has been interpreted to mean that "past persecution, without more, satisfies the requirement of 101(a)(42)(a), even independent of establishing a well-founded fear of future persecution". Desir v Ilchert, 840 F. 2d 723 (9th cir. 1988). (Appendix B) This same point is also made clear in the INS Basic Law Manual, U.S. Law and INS Refugee Asylum Adjudications, November 1994 p.19. (Appendix C). The President is not required to apply the lesser standard in fashioning the refugee admissions program but certainly is permitted to do so. The United States agreed to the use of the standard found in the 1951 Geneva Convention for the CPA screening. However, there is nothing in the CPA to prevent the United States from implementing a separate bilateral agreement with Vietnam which applies the lesser standard once the applicant has returned to Vietnam. Indeed, the UNHCR has made it clear that it would consider such an arrangement entirely appropriate from the perspective of the CPA.

To apply a standard requiring past persecution only, the applicant would have to be seen as receiving refugee status prior to legally re-entering Vietnam. This might be done by a provisional grant of refugee status while the applicant was still in the first asylum country. Upon return to Vietnam, he/she could be interviewed by INS and his/her refugee status confirmed or revoked. Another,

perhaps simpler, solution would be to return the applicant to Vietnam in a transit status. The applicant would then be interviewed and adjudicated under 101(a)(42)(a) as not yet having entered Vietnam in a juridical sense.

The treatment of the returnees as transients has other advantages as well. The returnees would be kept separate from the general population. This makes their treatment easier to monitor and provides assurance that the Vietnamese government is meeting its commitments with respect to permitting speedy processing. From the Vietnamese perspective, it lessens contact with the general population and reduces the problems which they might have as a result of the lesser standard required of the returnees to qualify for resettlement as compared to ODP applicants. The returnees could be brought back in manageable tranche and processed promptly. Those rejected for refugee status could then be moved to the reintegration processing point for processing to return home. Those granted refugee status should probably be moved to a separate location for medical processing and sponsor assurances, either in Vietnam or elsewhere in the region.

II. A Presidential Determination

A Presidential Determination should establish a TRACK II program for the expedited processing of asylum applicants and others returning to Vietnam from the camps of Southeast Asia. It should also redress one inequity in the in-country program for former political prisoners created by the withdrawal of the use of public interest parole for children of the former prisoners and establish a goal of winning Thai approval for the processing for resettlement of Hmong applicants who are already recognized as refugees. The Determination should make clear:

1. that refugee status and resettlement through the USRP would be provided to those who can demonstrate that they have either suffered past persecution or have a well founded fear of future persecution.
2. that categories of presumptive eligibility would be established by the Determination (similar to that issued by President Reagan with respect to Indochinese refugees in 1982) and that such categories would be based on past persecution. The Determination would establish a presumption of past persecution for the following groups:
 - Persons with one year or more of re-education camp confinement, or where a permanent disability was suffered during a lesser period of confinement.
 - Persons with five years or more employment with the U.S.

government or a U.S. company, NGO or other U.S. institution; less with special circumstances such as training in the United States.

- Persons with five years or more service with the civil or military service with the former South Vietnamese government; less for those trained in U.S., decorated by U.S., or involved with the U.S. Special Forces, intelligence activities or other special programs of the U.S. government.
 - Persons who were forced to relocate to a punitive New Economic Zone for five or more years. Persons with a total of eight or more years, during which they were either forced to relocate to a New Economic Zone or were denied a Ho Kau (family registration paper).
 - Persons who have close family members (spouses, parents, children and siblings), who have suffered three or more years of re-education or who died or suffered a permanent disability during a lesser period of confinement.
 - Persons confined for at least one year for political acts committed after April 1975, including imprisonment as a result of attempting to escape Vietnam or for avoiding military draft for reasons of political conscience.
 - Religious leaders, monks, priests ministers, nuns and other religious persons of the major religions of Vietnam, including the Hoa Hao and Cao Dai sects.
3. that INS interviews would be made available also for other applicants who do not fall within these categories but do request interviews. These applicants would be examined to determine whether their histories would sustain a finding of past persecution. If so, that fact would qualify the applicant for refugee status and resettlement.
4. that public interest parole (PIP) would be used for a limited number of returnees from the camps who do not fit the refugee definition including:
- a. Family Unification; persons returning from the camps.
 - children returning from the camps with their parent or parents who have been processed as refugees under this Determination.
 - other persons returning from the camps who have been living as a dependent member of a family whose principal applicant is processed as a

refugee under this determination.

- beneficiaries of approved non-current immigrant visa petitions in the first, second and third family preferences.

b. Family Unification; former political prisoners still in Vietnam.

- Unmarried children of former political prisoners who are processed out of Vietnam as a part of the ODP program will be provided with PIP as had been the case until recently.

c. Compelling humanitarian reasons for U.S. resettlement. In order to qualify for this category, the applicant must have either (A) at least one relative in the United States in his or her immediate blood line (parent, grandparent, child, grandchild, sister, brother, uncle, aunt), or (B) his or her closest living relative in the United States. In addition, the applicant must be able to establish a compelling humanitarian ground favoring resettlement. Such grounds would include:

- Suffering severe traumatic violence during escape from Vietnam.
- Need for medical treatment not available in Vietnam.
- Abandonment or brutalization of minor child by parents in Vietnam.
- Severe medical disability.
- Persons with no immediate family remaining in Vietnam who are unable to fend for themselves for reasons of age or disability.

5. that all persons returning from the camps who are the beneficiaries of current immigrant visa petitions will be included in the expedited processing under this Determination. In view of the uncertainty over whether the Vietnamese government will issue exit permits to those who have married overseas, it is especially important to include the spouses of permanent resident aliens and U.S. citizens in this group.

6. that the Secretary of State should work with the Royal Thai Government to seek agreement that all Hmong, now in Thailand who are qualified as refugees and eligible

for resettlement in the United States should be permitted to depart for such resettlement.

III Special Cases Special procedures should be established for a select number of cases not fitting into the above classes; which are screened and presented by the InterAction CPA Working Group as especially sensitive. These would not number over 100 cases.

IV Modalities and Problems

1. A Presidential Determination is a must for this proposal to go forward. Without it, the outcome of the operation of the system would be too uncertain for the NGOs to encourage camp residents to return home.

2. Obviously, such a plan can be implemented only with the agreement of the Vietnamese government. There are, however, powerful arguments leading to such cooperation:

- it would be likely to speed up the end of a program which the Vietnamese very much do not want to see continuing on over a long time frame.

- it would help greatly to avoid the spectacle of boat people maiming themselves, rioting and even committing suicide all over Southeast Asia (not a bad argument from the U.S. perspective either).

- it would largely remove the difficulty of reintegrating a significant number of persons whom the Vietnamese authorities distrust.

It is true that the Vietnamese government has, in the context of a much smaller program discussed with it by the Department of State (the "egregious cases Track II"), indicated a preference for a program that was not seen as special or separate from the ODP. The proposal presented here, by virtue of its size, would inevitably have to be dealt with as a separate program. In any case, the Vietnamese might very well wish it so since this would make it easier to control problems which might arise as a result of the differences in the standards applied in the two processing streams. The strongest consideration from the Vietnamese perspective is likely to be the desires of their CPA partners; especially the United States and the ASEAN countries.

3. Though they do not have a veto on U.S. actions in this respect the United States' partners in the CPA and the UNHCR should be given a reasonable ground for our proposal.

- at the March 16 Steering Committee Meeting in Geneva, we understand that it was made clear by the U.S. delegation that U.S. agreement to the Steering Committee Communique was without

prejudice to any arrangements which we might work out with the Vietnamese after the return of the camp residents to Vietnam.

- it is widely understood that this is a population for which the United States has special concerns.

- as noted, unlike international arrangements, U.S. law permits the granting of refugee status for past persecution only.

- the proposal offers one of the few ways out of the present impasse and will bring the CPA to a more expeditious and less troublesome close, with most people still returning to Vietnam.

4. It is estimated that 7,000 - 9,000 persons would be admitted as refugees under this proposal in FY 1995 and 1996. Very rapid action would have to be taken to implement this program in order that it be seen assisting in dealing with the current problem rather than as further delaying the ending of the CPA. INS personnel resources will have to be increased significantly and rapidly but, initially, will probably have to be diverted from the ODP program. The regular ODP program, however, should not be allowed to be disadvantaged by this proposal for any significant period of time, both because regular ODP applicants have been standing in line for a long time and because any significant delay would be seen as a serious negative aspect by the Vietnamese government. Refugee admission numbers for this group be partially accommodated within unused FY 1995 admission numbers if the program could get underway quickly. Probably, however, most would have to be met out of FY 1996 admissions which should be increased accordingly. The program is doable if the will is there.

5. There will be additional processing costs but, given the likely acceleration of the return of the camp population home as opposed to the lengthy and painful period which we now face, these might well be compensated to a considerable degree by savings in camp care and maintenance costs.

6. The question of comparability with persons with similar qualifications now within Vietnam could be raised.

- If still within his/her own country of nationality, the standard is a person "who is persecuted or who has a well-founded fear of persecution". 8 USC 1102 (a) (42) (B) (Appendix A).

- The asylum seekers in the camps have had the additional hardship of extremely and increasingly onerous and stressful living conditions for many years in the camps. They left behind and most lost their property and other material goods when they departed Vietnam.

- The implementation of this proposal both benefits those offered resettlement and contributes to an overall more acceptable ending to this long standing program.

7. It is estimated that 500 to 800 persons would benefit from the use of PIP under this proposal. These costs would be relatively small as a way to end this program on a humane note.

Shep Lowman, USCC/Migration and Refugee Services

Lionel Rosenblatt, Refugees International

Dan Wolf, Legal Assistance For Vietnamese Asylum Seekers



American Council for Voluntary International Action

July 1995

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InterAction, the American Council for Voluntary International Action, is a coalition of more than 150 U.S. based nonprofit organizations working to promote human dignity and development in 165 countries around the world. Our member organizations have local affiliates that provide services to refugees and other newcomers in every state of the nation where refugees are resettled. InterAction's Committee on Migration and Refugee Affairs includes the CPA (Comprehensive Plan of Action) Task Force, which is comprised of resettlement agencies, advocacy groups, and agencies working in reintegration assistance in Southeast Asia.

Principles on the CPA and Indochinese Asylum Seekers

The CPA which was adopted in 1989, distinguished between refugees and non-refugees by screening newly arriving Indochinese asylum seekers. While most of us believe that there should have been a more responsive appeals process, about 73,000 of those screened out have returned to Viet Nam.

The challenge now is to augment the CPA by addressing those 40,000 boat people remaining in the refugee camps of Southeast Asia in an honorable and effective manner. This has become especially urgent in light of recent events which have dramatically raised the probabilities of serious violence in the camps.

InterAction's CPA Task Force agrees to the following:

1. The present situation, involving the possibly imminent prospect of forced repatriation with casualties, is extremely dangerous and must be addressed.
2. The U.S. should take a leadership role in dealing with this problem.
3. Solutions are needed which address wrongly screened out cases and promote a peaceful resolution to the present situation.

We recommend for consideration this possible approach:

- Allowing boat people now in the UNHCR camps in Southeast Asia a hearing with a U.S. official; the U.S. would accept those who meet pre-agreed criteria. For example: those with U.S. connected service, re-education or other evidence of past persecution.
- In light of apparent objections by first asylum governments to reconsidering cases, this hearing might take place in Viet Nam on some sort of transit basis.
- 4. For those repatriates remaining in Viet Nam, augmented monitoring and adequate sustained reintegration assistance remains essential.

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InterAction is a membership association of U.S. private voluntary organizations engaged in international humanitarian efforts including relief, development, refugee assistance, environment, population, public policy, and global education.

InterAction's CPA Task Force Co-Chairs:

Lionel A. Rosenblatt, President
REFUGEES INTERNATIONAL

Dr. Le Xuan Khoa, President
SOUTHEAST ASIA RESOURCE ACTION CENTER

On behalf of the following agencies:

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REFUGEES
INTERNATIONAL



STATEMENT OF LIONEL A. ROSENBLATT, PRESIDENT
REFUGEES INTERNATIONAL

JOINT HEARING

THE SUBCOMMITTEE ON INTERNATIONAL OPERATIONS AND HUMAN RIGHTS

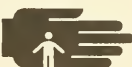
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THE SUBCOMMITTEE ON ASIA AND THE PACIFIC

FOR THE RECORD

JULY 25, 1995

**REFUGEES
INTERNATIONAL**



**STATEMENT OF
LIONEL ROSENBLATT, PRESIDENT
REFUGEES INTERNATIONAL**

For 20 years, the U.S. has taken a strong lead in protecting and assisting Indochinese refugees. In one of the most important humanitarian achievements since World War II, over 1.5 million refugees from Vietnam, Cambodia and Laos were provided temporary asylum in countries of Southeast Asia and then resettled in the U.S. and other countries. This would not have happened without American government leadership.

Several years ago, as a way to insure that Vietnamese boat people continued to receive temporary asylum in the region, the UNHCR and more than eighty countries, including Vietnam, agreed to implement the Comprehensive Plan of Action. Under this CPA, screening of all newly arriving Vietnamese asylum seekers was put in place and only those screened in as political refugees were permitted resettlement; those screened out as "economic" refugees were to return to Vietnam.

To the surprise and concern of many observers, screening was conducted rather restrictively. Former associates of the U.S. war effort were often not screened in. The UNHCR exercised only sparingly its "mandate" prerogative to accord refugee status to such cases on appeal. This left stranded in the camps a significant number of individuals who had served with the U.S. or former government of Vietnam.

More than 75,000 Vietnamese have returned to Vietnam since the beginning of the CPA, but voluntary repatriation rates have been dropping since late last year and nearly 40,000 remain in camps in the region. The countries of asylum are growing impatient and there is concern that forced repatriation could occur in the very near future. Already, in Hong Kong, there have been mandatory return flights to Vietnam. This relatively restrained use of force by British-managed troops could become much more violent elsewhere in the region.

The challenge is to head off the possibility of forcible repatriation, and gain time to promote voluntary return, while also addressing the cases of those screened out for whom the United States has a particular concern. For some time, especially since it became clear that the UNHCR was unwilling to exercise its mandate in the cases of those screened-out Vietnamese with close associations to the U.S. or the former government of Vietnam, Refugees International has felt that the way to do this is to open a so-called Track II which would work as follows.

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Statement of Lionel A. Rosenblatt
Page Two

The central premise of Track II is to permit those asylum seekers with past U.S.-connected service or other sensitive backgrounds to present their bona fides to a U.S. official. This would probably have to be accomplished through an interview in Vietnam; any asylum seeker could return for such an interview.

Those approved by the U.S. official in such interviews would remain in transit status and be processed expeditiously for departure to the United States.

Such a program would have to be coordinated closely by the U.S. government to insure that former associates and others who could face persecution are actually accepted by the U.S.

We also need assurances from the Vietnamese government that it will permit those accepted by the U.S. to remain in transit status while in Vietnam and to depart without being subject to the normally extensive exit formalities. The time to seek such assurances from the Vietnamese government is now as the Clinton Administration begins to work out the details of normalized relations with Vietnam. To leave this issue off the agenda would be an abrogation of our humanitarian responsibilities.

There is no more fitting issue than this unfinished humanitarian business to prove that the U.S. and Vietnam can work effectively together.

To prevent the use of force against the boat people, the Track II solution should be in place before the ASEAN heads of state meet on August 1.

The Hmong refugees in Thailand face a unique problem. Many have been screened in and the U.S. has requested from the Thai government access to those who wish to resettle. We hope that this can be accomplished without delay, while still permitting those who wish to return voluntarily to Laos to do so.

President Clinton is the fifth president to have stewardship of the Indochinese refugee program. We need his leadership to bring the final chapter to an honorable conclusion. Certainly the last thing the President needs is to be pilloried for having allowed one of our great humanitarian accomplishments to end tragically.

STEVE GUNDERSON
3D DISTRICT, WISCONSIN

MEMBER
AGRICULTURE COMMITTEE
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August 2, 1995

Hon. Chris Smith
Chairman
Subcommittee on International Operations and Human Rights
House Committee on International Relations
2401A Rayburn HOB
Washington, DC 20515

Dear Mr. Chairman:

Thank you for holding the hearing on the problems with the Comprehensive Plan of Action. As you know, a member of my staff participated in a fact finding trip early this year which shed additional light on the flaws of the CPA. I have enclosed a statement to add to the testimony you heard on the CPA last Thursday. I respectfully request that the statement be added to the hearing record.

I would also request that the attached materials be added to record, to the extent they have not yet already been added. They include a statement by Tou Zer Vang, whose brother-in-law was killed upon return to Laos, and Kue Xiong, a Hmong who grew up in the camps in Thailand. Mr. Xiong now lives in St. Paul, MN. and served as an interpreter during the fact finding trip earlier this year. I also respectfully request that to the extent there is room in the record, the findings of the delegation be entered into the record.

Thank you again for your vigilance on the issue of Indochinese refugees. I look forward to working with you in the future on trying to bring the refugee issue to a satisfactory conclusion.

Best regards,

Steve Gunderson
Member of Congress

SG:tb

enclosures

COMMITTEE ON INTERNATIONAL RELATIONS
U.S. HOUSE OF REPRESENTATIVES
WASHINGTON D.C., 20515

Subcommittee on International Operations and Human Rights
Christopher H. Smith, Chairman

July 27, 1995

Testimony of Tou Ger Vang
Fresno, CA

Hearing on the Comprehensive Plan of Action

Testimony of Tou Ger Vang to the Committee on International Relations, Subcommittee on International Operations and Human Rights Hearing: the Comprehensive Plan of Action, July 27, 1995

Mr. Chairman, Members of the Subcommittee:

Thank you for giving me the opportunity to speak in our great nation's capital on behalf of my people in danger in Thailand and Laos.

My name is Tou Ger Vang. I am 45 years old. During the Vietnam War I was a Lieutenant in the Royal Lao Army, Military Region II, under General Vang Pao. I joined the military when I was 12 years old. After the Pathet Lao (Communist Lao) soldiers led by North Vietnamese officers took over my village, I became a student/soldier at Long Chieng base: we would study in class, go out to fight the enemy when necessary, and then return to our schoolbooks. At that time my father was vice-District Chief in Navang, Muong Vangxai, Xiengkhouang Province; during the Japanese occupation, my father had served as a soldier with the French forces.

In 1961 the Hmong accepted a sacred role with the American advisors in Laos. We joined with them to fight against the Vietnamese communist invaders who had run us out of our villages. We joined with them to defend our infant democracy in Laos. We joined with them to defend freedom in Indochina. We had a sacred role and we were very effective.

The Hmong intelligence and combat Special Guerrilla Units (SGUs), trained by U.S. advisors, repeatedly disrupted the Ho Chi Minh Trail complex, costing the enemy billions of dollars in military equipment and supplies. SGUs rescued hundreds of downed U.S. pilots, saving them from torture and death in Vietnamese jails and prisons. SGUs fought Communist ground forces, capturing the strategic Plain of Jars and protecting American personnel. SGUs protected installations that allowed all-weather, all-hour interdiction against the enemy. Hmong SGUs inflicted fifteen years of heavy damage on the enemy. We were very effective--we became the Vietnamese and Lao Communists most feared and hated enemy.

In the fifteen years of joint combat with the Americans, Hmong military casualties were more than 35,000; we cannot estimate how many thousands of our civilians were killed during the war.

After the Communist takeover in 1975 we were hunted and killed by order of the government in Vientiane. These orders to exterminate us were broadcast over the government's radio station. Hmong trying to flee over the Hin Heup Bridge into Thailand were slaughtered. This was the beginning of the Communist revenge that we suffer today.

At Hin Heup the pattern of genocide first became clear. At Hin Heup the pattern of cover-up became established. The government claimed within Laos, and to the outside world, that Hmong slaughtered Hmong at Hin Heup--LyTeck (Hmong), former Royal Lao government official gave the orders to fire--but the former Prime Minister Souvannaphouma gave the original order to LyTeck. Many in the Royal government cooperated with the new Communist government, until they too were betrayed and killed.

My father was shot to death while walking to his rice fields in 1976 by the Pathet Lao--Lao Peoples Democratic Republic (LPDR)--soldiers. My older brothers went after the murderers, but they escaped. The soldiers soon returned with more soldiers, and my brothers won that small battle.

In 1978 my mother and my older brother were shot and killed by LPDR soldiers while they were in a boat on the Mekong trying to escape to Thailand. My mother-in-law and father-in-law were killed in that same boat. Thirteen of my family were killed by LPDR soldiers in that boat on the Mekong--one survived.

Amnesty International says that "between 1.2 million and 2.5 million Cambodian, Vietnamese, and Laotian people have perished in this genocide since 1975, and the genocide is continuing today in these countries." My wife and I have lost 33 family members, killed in Laos by the Communists since 1975.

Lowland Lao told their Hmong neighbors and friends that the LPDR, under orders from the Vietnamese, had an extermination policy for the Hmong and others who had helped the Americans--but especially for the Hmong. Old friends--lowland Lao--would pretend not to know me. I asked one of them what was wrong. He told me, "If they see me talking to you, I won't have a throat any more." LPDR and Vietnam signed a formal cooperation agreement in 1977. The government was always watching its citizens. It is still watching.

Now I will come to present time. It is a tremendous risk that we undertook to give these names publicly. I say "we" because the families of the victims needed to discuss the risk--the safety of the survivors in Laos and even the safety of family members here--or danger to myself. But it's important that the Congress and the people of the United States know what happens to Hmong and others in Laos.

On the night of May 11, 1995, at approximately 8:00 pm, several Pathet Lao (LPDR) soldiers broke into my brother-in-law Za Xiong Yang and sister-in-law Xia Vue's house in Ban Mouang Village, City and District of Mouang Mok, Xiengkhouang Province, Laos. The family was sleeping. The soldiers opened fire and destroyed the entire building with their gunfire. The soldiers believed that all the family members had been killed; they stole all the silver bars the family owned. The soldiers returned to the murder site and found that some of the family members had survived the assault.

Za Xiong Yang received several shots to his chest and multiple shots to his body. His last words to his son and youngest brother were, "Please love all your brothers and sisters who are still alive." He was 55 years old. His wife, Xia Vue, was shot once through the eye; the back of her head blew off and she died instantly. She was 53 years old. Both funerals were held in Ban Mouang.

La Yang, Za Xiong's brother was shot through the waist, and his wife was shot through the shin; the bullet blew off three inches of muscle in her calf. Neng Yang, Za Xiong's older son was shot in his right ankle. Pao Shoua Yang, Za Xiong's daughter was shot through her right ankle. The survivors were treated at Hospital #103 in Vientiane. We were told about the murders by

phone on May 16.

I am happy to say that the survivors have been released from the hospital, although they say their recovery is slow. But what happens to them now? Their parents were murdered. Neng is 18 years old and was just married before the murders; Pao Shoua is only about 11 years old. They wrote and asked me if they could come to us in America, or if they should go back to Ban Mouang. I am worried sick about their safety, and about their survival.

What happened in Ban Mouang on May 11 is the Hmong story in Laos. Civilians were murdered. The Lao government is the sole authority in Laos. If it sends its soldiers to kill civilians, then the soldiers do it. Witnesses are terrified to report what happened because soldiers can come for them, too. Who can witnesses report to? And even if it is reported, the communists will say someone else did it, or it was because of drugs, or any convenient blame.

This family had stayed behind in Laos in 1975. They were moved at gunpoint to Ban Mouang in 1976: "You move where we tell you, or you give us your weapons and go live in the jungle. Then we'll see who dies first." Hmong were moved around like this. In their years at Ban Mouang, Za Xiong Yang and Xia Vue obeyed the LPDR officials and they made no trouble. They did nothing against the LPDR and they were murdered.

Because of this pattern, because the LPDR kills its own citizens, the refugees at Napo--5,000 of them--signed a petition to not be sent back to Laos. And because of this petition, six refugees from Napo camp have been in Thai prisons since September 1994.

Neng Vang was a returnee, repatriated from Napo Camp on March 29, 1995 to Nambat Village, Luang Prabang Province. On the evening of May 26, 1995, he was returning from fishing at the river with two boys younger than himself. Uniformed Pathet Lao soldiers were standing along the path. One opened fire. Neng Vang was shot twice in the chest, the bullets emerged from his back, and he died. Neng Vang would have been 20 years old in November.

His older brother and father still live in Nambat village. His family in Sacramento and Fresno were told about the murder by phone. Neng Vang and his family volunteered to repatriate. They believed that their lives would be better in Laos than in Thailand, or in America.

The Department of State says that they have checked on human rights abuses in Laos, with no results. UNHCR states that with the exception of Vue Mai's disappearance, they find no "credible evidence" of human rights violations in Laos. State Department and UNHCR have checked for us and I personally thank them from my heart for trying to investigate for us. Let me say that the problem of credibility is the problem of LPDR credibility. Also, there is a limit to the feasibility of State Department or UNHCR investigation inside Laos, as well as limits to the feasibility of legal rescue for those persecuted inside Laos.

As I stated before: witnesses are terrified to come forward; intimidation is standard practice; an LPDR government official does not have to be present with a monitor during an interview

for intimidation to occur--neighbors or fellow villagers can be used to inform and enforce compliance. Because the State Department and UNHCR do not uncover evidence does not mean that there is no violence.

Like other nations in our repressive situation, we Hmong have our own "underground communication network". We see the pattern of reprisal and blame, and it has not changed in twenty years. We understand the silence of the witnesses, and the lies of the victims--silence and lies are survival tools in the LPDR. Who in the camps, old soldiers at risk, want to return to being chosen out and placed in reeducation camps from which they never return? We know that returnees are questioned about military service, although the LPDR claims there is no discrimination. We are watching from inside, too. We are watching to try to save lives, and we often feel helpless.

It is like the Jewish holocaust--no one knew until it was too late. No one believed the reports and no one helped the Jews. And now there are those today who want the world to believe that the Jewish Holocaust did not happen.

We know that King Sisavang Vathana and members of the Royal Family were arrested and then assassinated. We know that 46,000 government officials were sent to reeducation camp. Some have survived. Outsiders may say that the killings and persecutions are over. They are not over. 500,000 people fled Laos because of persecution that did not stop. There must be an end to repatriation of all refugees at risk. There are many incidences of violations in Laos today. Some of the most frightening are the chemical attacks. A small hospital in Sayaboury underwent chemical attacks in late 1994-early 1995.

Our problem is the present government of LPDR and its policies. Repatriation cannot continue with the present policies. Right now, LPDR soldiers are massed in Nam Heo, central Laos. People cannot farm. It is not over. The UNHCR investigated the death of Chong Moua Thao, but it doesn't appear complete. The LPDR is an impenetrable regime--and that is what must change.

The LPDR violated the 1954 Geneva Agreement on Indochina, the 1962 Geneva Accord, and the Paris and Vientiane Agreements of 1973. For my people, I request, since the government of the United States has normalized its relations with Vietnam, that the United States make diplomatic efforts to negotiate a new peace agreement for the benefit of the people of Laos and the region. I request for my people that the government of the United States help bring about democratic reforms in Laos, including multi-party, free, general elections. We all implore you to persuade the government of Thailand to halt repatriation until we have a democratic government in Laos.

I will end with a quote from A.M. Rosenthal of The New York Times. He wrote about the ship of Jewish refugees which was forced to sail back to Germany because no one would accept them. He said, "But about the Vietnamese and Laotians, Americans will never be able to say we did not know." I appeal to you personally to help bring Neng Yang and Pao Shoua Yang--my young orphans--to life, safety, and freedom in the United States.



Lao Human Rights Council, Inc.

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**Testimony of
Kue Xiong
Representative
Lao Human Rights Council, Inc.**

on the flaws of the Comprehensive Plan of Action and the
Tripartite Agreement on Lao and Hmong Refugees and Asylum
Seekers in Thailand and Repatriation of Refugees from
Thailand to Laos

Before the
Subcommittee on International Operations and Human Rights

U.S. House of Representatives
Washington, D.C.

July 27, 1995

**Remarks of Mr. Kue Xiong,
Hmong/Lao Human Rights Monitor
&
Delegate to the Fact-Finding Mission by the Office of
U.S. Congressman Steve Gunderson to the Hmong
Refugees in Thailand**

**On July 27, 1995
Before the Subcommittee on International Operations and
Human Rights
of the
International Relations Committee
U.S. House of Representatives
Washington, D.C.**

Mr. Chairman and Members of the Subcommittee, thank you for holding these hearings.

Allow me to introduce myself briefly. I am a Hmong-American and a representative of the Lao Human Rights Council, Inc. as well as the Lao Veterans of America, Inc. Between December 1994 and January 1995, I went to the refugee camps in Thailand as member of the fact-finding delegation with the office of U.S. Congressman Steve Gunderson. In addition, I have received an overwhelming body of credible evidence and reliable first-hand information from Hmong and Lao refugees living in the camps in Thailand about flawed and corrupt screening, forced repatriation and human rights violations as the result of the terrible implementation of the Comprehensive Plan of Action (CPA) of 1989 and the Luang Prabang Tripartite Agreement on Lao Refugees of 1991. I agree with the report of the Lawyers Committee for Human Rights, which confirmed that the "screening is conducted in a haphazard manner with little concern for legal norms. Extortion and bribery are widespread." The Lawyers Committee continued to report in 1992 that, "The entire screening and review procedures remain seriously flawed."

Mr. Chairman, please allow me to explain why the CPA and the Tripartite Agreement are flawed and corrupt. Take these cases:

1.) From April 7 to April 9, 1992, the officials of the Thai government and the UNHCR cooperated to arrest and imprison two Hmong refugees in the Nong Saeng Camp, Thailand because they refused to sign documents for voluntary repatriation to return to Laos. The imprisonment of these two non-volunteer refugees, Mr. Chong Neng Vang (CSC-559) and Cha Seng Vang (CSC-557), is evidence of flaws and corruption under the CPA and the Tripartite Agreement. On April 28, 1992, the officer-in-charge of the Legal Section of the UNHCR in Bangkok signed and sent a letter to the Lao Human Rights Council admitting that "on 7 April (1992), they [Chong Neng Vang and Cha Seng Vang] refused to put their fingerprints on the standard Thai Immigration paper. On 8 April, the two men met our UNHCR Field Officer and said they did not want to return to Laos because they wanted resettlement in the United States. On April 9, 1992, the Thai government and the UNHCR forced Chong Neng Vang and Cha Seng Vang out of prison in the Nong Saeng Camp along with several hundred other refugees and forcibly returned them to Laos. Chong Neng Vang and Cha Seng Vang have family members in Portland, Oregon and Sacramento, California. The UNHCR and Thai government denied the request for family reunification and political asylum of Chong Neng Vang and Cha Seng Vang and many other refugees in Thailand.

2.) Between March and June 1993, 305 Hmong political refugees were forced to pay about \$200,000 in extortion fees to the authorities and officials of the UNHCR and Thai government and other government officials to obtain "refugee status," and the paperwork for family reunification and political asylum in the United States. The authorities arrested and imprisoned Mr. Lor Xang, a leader of the group of 305 refugees. By the end of May 1994, all 305 refugees were forced back to Laos. The authorities and government officials did not refund the money to those refugees nor to their families in the United States who had provided the funds so their family members would receive a fair screening procedure. Each family of refugees lost about \$2,000 to corrupt officials.

3.) On September 5, 1994, the six leaders of about 12,000 Hmong and Lao refugees in Napho Camp, Thailand, were asked by their fellow refugees to submit a 100-page document of petitions and letters to the U.S. Congressional delegates from the House International Relations Committee (Congressman Lee Hamilton and Congressman Ben Gilman's staff) who attempted to enter the Napho Camp on a fact-finding mission. However, the delegates were not permitted to enter the Napho Camp. The refugees sent the petitions and documents to the U.S. Congress and U.S. Department of State through the Lao Human Rights Council. Therefore, on September 16, the delegates of the Lao Human Rights Council met with Mr. William Fleming, official of the Bureau of Refugee and Migration Affairs and Country Officer for the Laos Desk of the U.S. Department of State. The delegates submitted the petitions of the refugees to Mr. Fleming for investigation of the trouble of forced repatriation and other flaws under the CPA and the Tripartite Agreement. Two family members of victims of genocide in Laos accompanied the delegates. They submitted reports and solid evidence of the murders of Mr. Chao Moua (a returnee to Van Vieng, northern Laos, on May 18, 1994) and Mr. Chong Neng Vang (a non-returnee in Thaket, Bolikhamsax Province, Laos, on

June 22, 1994) to Mr. Fleming and Ms. Deborah Malac, Country Officer for the Laos Desk, for their investigation and response. However, the officials of the U.S. Department of State never did respond to the family members on these tragedies. The case of Vue Mai was also raised to them for investigation, but they did not respond to our concerns.

4.) On December 30, 1994, delegates from the office of Congressman Steve Gunderson and I entered the Napho Camp. Eyewitnesses among the refugees confirmed to our delegation that on September 19, 1994, officials and authorities of the Thai government and UNHCR cooperated to arrest and imprison the six leaders of the refugees in the Napho Camp because they had attempted to submit petitions and other documents concerning forced repatriation and flaws of the CPA to the U.S. Congress on September 5, 1994. I, personally, interviewed many refugees in the Napho Camp. They told me that they did not want to return to Laos because of political persecution. The refugees told me that they feared persecution, murder and imprisonment upon their return to Laos because of the past connections between the U.S. government and the Hmong people during the Vietnam War. Many of those Hmong and Lao refugees, including Vue clan family members, declared that they did not want to return to Laos since Mr. Vue Mai disappeared. Many of the refugees told me that the UNHCR, Thai government, the U.S. government and Communist Lao government could not monitor the safety of Mr. Vue Mai in Laos. They often asked me the question: "How can these governments and the UNHCR guarantee the safety and human rights of the many thousands of other Hmong returnees in Laos, if they did not guarantee the safety of Vue Mai, one of their high-profile Hmong repatriate leaders? There were about 8,000 Hmong and Lao refugees in the Napho Camp in December 1994. There are, in 1995, about 50,000 Hmong and Lao refugees in Thailand. Of this figure, more than 35,000-40,000 refugees escaped from the Ban Vinai, Chieng Kham, Napho and other camps in Thailand to unknown locations between the border of Thailand and Laos (from 1991 to 1995) in order to avoid forced repatriation to Laos. The UNHCR, the U.S. Embassy and Thai government have failed to keep track of the problems of the displaced refugees. Many hundreds and perhaps thousands of refugees, men, women and children, are hungry and starving to death after having escaped from these refugee camps. During the journey of the Congressional fact-finding mission, Mr. Timothy Bartl, Legislative Assistant to Congressman Gunderson and Mr. Philip Smith, Executive Director of the Center for Public Policy Analysis and former aide to Congressman Don Ritter, and I met and talked with many displaced Hmong and Lao refugees. They confirmed that they escaped from the refugee camps in order to avoid forced repatriation to Communist Laos. The other delegates and I found from interviewing the refugees in Thailand that the CPA and the Tripartite Agreement had clearly, and without question, reversed voluntary repatriation to forced repatriation. The refugees declared to the delegates that they had sent many hundreds of letters and petitions to the U.S. Embassy in Bangkok, the Thai government and the UNHCR in Bangkok concerning the problems of forced repatriation. However, the government officials have continued to ignore the letters, petitions and requests of the refugees. The refugees in the Napho Camp and other

camps told the delegates that forced repatriation has been going on since 1991. According to refugees in Thailand, returnees in Laos, and their family members in the United States, about 9,000 Hmong refugees—and an even larger number of ethnic Lao refugees—were forced to return to Laos between 1991 and 1995.

5.) The six leaders of refugees at Napho were imprisoned in Suan Phlu Prison in Bangkok. A letter of the UNHCR of December 7, 1994, assured Congressman Benjamin Gilman, James Leach and Steve Gunderson that there are "English classes" for the six prisoners in Bangkok. Mr. William Fleming, of the U.S. State Department, told the Hmong-American people in the California Hmong Times of December 15, 1994, that one Lowland Lao of the six prisoners was repatriated to Laos through the Napho Camp. However, on December 31, the delegates from the office of Congressman Gunderson's mission and I visited, met and talked with the six prisoners in Suan Phlu. All the six prisoners were in deplorable conditions in the prison. The prisoners told the fact-finding mission delegates that there were no "English classes" for them in the prison. Instead, the six Napho camp leaders were suffering in hellish and unbelievably inhumane conditions. They were crowded together with other prisoners in a small prison cell where they were suffering from a lack of food, medical care, sleep and exercise. The delegates learned that UNHCR and U.S. State Department officials had grossly misrepresented to the U.S. Congress the status of these six prisoners and the plight facing the Hmong refugees in Thailand. The UNHCR and State Department had lied to Congress about these six prisoners and about the forced repatriation and human rights violations against the Hmong refugees in Thailand. Congressman Gunderson's office issued a report to the U.S. Congress on March 3, 1995, detailing this incident and its findings of forced repatriation and gross human rights violations against Hmong refugees in Thailand.

6.) In the past four years, the UNHCR, U.S. Embassy in Bangkok, and U.S. Department of State have sent many letters to the U.S. Congress, family members of Hmong/Lao refugees in the United States and the Lao Human Rights Council. These government agencies have claimed that there is no persecution against returnees in Laos. These government agencies say that they have closely monitored the problems of returnees in Laos. They are, however, completely attempting to deceive the U.S. Congress and misrepresent the actual situation facing Hmong and Lao refugees returned to Laos. My information, confirmed by the Chairman of this Subcommittee at his July 25th hearing in Congress on the CPA, is that UNHCR has only the ridiculously low total of two (2)—I repeat a total of two— of these people tasked with monitoring Hmong returnees in Laos. Can one seriously call this monitoring? No, absolutely not. This constitutes a "cover-up" and a "white wash" to Congress. It is bad news for the victims of forced repatriation and their family members since in fact it has been established that the UNHCR at this time has only a few expatriate monitors in Laos. Worse yet, these so-called "monitors" are, in fact, closely tracked by Lao Communist security forces and indeed the government usually requires that the UNHCR "monitors" be accompanied by Lao nationals approved by the Communist authorities to whom they report about their activities. There is an overwhelming body of credible

evidence of forced repatriation of refugees from Thailand to Laos and massive human rights violations against returnees in Laos. But, in Laos there exists no proper or adequate monitoring system. For instance, on January 13-14, 1994, two representatives of the UNHCR, Mr. Werner Blatter and Rene Van Rooyen, actually declared to Hmong and Lao-American people gather in Fresno and Santa Ana, California, that the UNHCR could not monitor and guarantee the safety of returnees in Laos. The UNHCR declared that it did not know what had happened to Vue Mai. On September 8-9, 1994, Mr. Edward Wilkinson, the Counselor of the U.S. Embassy for Refugee and Migration Affairs in Bangkok, campaigned in St. Paul, Minnesota and Fresno, California, in order to attempt to convince Hmong and Lao-American to endorse the repatriation policy. Mr. Wilkinson declared that the U.S. Embassies in Laos and Thailand depend on the UNHCR for information and the monitoring system of returnees in Laos. As a result, it is clear, that in reality there is no real or credible monitoring system and no guarantee of safety for Hmong returnees to Laos at all, despite the false assurances of officials and their non-governmental organizations (NGO) proxies to Congress.

Mr. Chairman and Members of this Subcommittee, I believe that forced repatriation of refugees from Thailand to Communist Laos has been going on since at least 1991. There is no real or credible monitoring system and no guarantee of the safety of returnees to Laos. I believe that the CPA and Tripartite Agreement and their implementation are grossly flawed.

These two agreements, their implementation and many of the officials and NGOs do the implementing need to be put under close review and warrant further investigation by the U.S. Congress.

Recommendations to the U.S. Congress

I would like to propose the following points to solve the problems of the Hmong/Lao refugee crisis in Thailand and the concerns of returnees in Laos:

1.) further and immediate U.S. Congressional action to stop all funding by the U.S. taxpayer for the forced repatriation of Lao and Hmong refugees from Thailand to Laos, like Chairman Chris Smith's successful amendment to H.R. 1561;

2.) the U.S. Congress should assist in the formation of an International Independent Human Rights Commission, including Members of the Lao Human Rights Council, to monitor and to guarantee human rights, peace, safety and freedom for returnees and other people in Laos before the repatriation of refugees from Thailand to Laos continues;

3.) the U.S. Congress should press the U.S. State Department, the United Nations, and the Association of Southeast Asian Nations (ASEAN) to bring true peace,

democracy, human rights, freedom, stability and national reconciliation to Laos—like in Cambodia and Haiti—before the repatriation of refugees from Thailand to Laos continues.

4.) the U.S. Congress should press the U.S. Department of State, Thai government, and the United Nations, to allow an opportunity for all Lao and Hmong refugees in Thailand to have freedom of residence, freedom of movement, political asylum, family reunification and resettlement in third countries, according to Articles 13, 14, and 15 of the Universal Declaration of Human Rights as well as international refugee and human rights laws.

5.) the U.S. Congress should directly press Thailand for the immediate release of the six Hmong/Lao camp leaders and their remaining family members in Thailand so they can leave Thailand for family reunification and resettlement in the United States;

6.) the U.S. Congress should directly press Thailand to immediately open Ban Na Pho repatriation camp and Sikhui Detention Center and permit all Hmong combat veterans and refugees there, including at least 6,000 (and possibly thousands more) that the U.S. State Department has agreed will be accepted into the U.S. in 1995-96, to leave Thailand for resettlement in non-communist third countries like the United States;

7.) the U.S. Congress should directly press Thailand to immediately and fully reopen the unique facility of Phanat Nikhom refugee resettlement center so that thousands of additional Hmong combat veterans and their refugee families can be processed to leave Thailand for resettlement in non-communist third countries like the United States, which has agreed to accept a minimum of 6,000 yet (and possibly thousands more) in 1995-96;

8.) the U.S. Congress should request that the President and the Secretary of State of the United States should use every diplomatic means available to ensure that safety and human rights of the six imprisoned Hmong/Lao camp leaders in Thailand and to secure their immediate release;

9.) the U.S. Congress should press for the safety and security of the Hmong and Lao refugees at the Buddhist temple of Wat Tham Krabok and rescreen and resettle many of these refugees especially Hmong combat veterans and their refugee families;

10.) the U.S. Congress should continue to act in support of the March 3, 1995, fact-finding report by Congressman Steve Gunderson's office about its mission to Hmong refugee camps in Thailand, particularly Section IV. "Findings and Recommendations."

Congress of the United States

Washington, DC 20515

September 22, 1994

The Honorable Warren M. Christopher
Secretary of State
2201 C Street, NW
Washington, DC 20520

At the end of July, the Royal Government of Thailand came to an agreement with the Government of Laos to turn over a list to them, by September 30th, of the names of 5,000 Hmong who will "voluntarily" agree to repatriate to Laos from Ban Napho refugee camp in northern Thailand. Only 2,000 have agreed to do so at this time.

Two weeks ago staff members of the House Foreign Affairs Committee were denied access to the Ban Napho refugee camp in Northern Thailand. There were reports of intimidation, beatings and jailing of Hmong there in an effort to get them to sign up by the September 30th deadline.

On September 16th, the House Foreign Affairs Committee received a petition signed by thousands of Hmong at the camp expressing their desire to come to the U.S. or stay in Thailand. They do not want to return to Laos. The petition was going to be handed over to the delegation when they visited the camp but because they were denied access, it was flown to Washington. Late last night information was received stating that the Hmong leaders of the camp who arranged the petition were arrested.

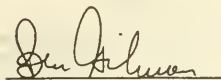
The U.S. has a refugee allocation of 7,000 Laotians this year. We will meet our quota from the Phanat Nikhom camp in Thailand this year. Next year we can use it to admit those Hmong in Ban Napho who are eligible to come.

On September 20th, at a meeting with Members of Congress, the Thai Ambassador to the United States was asked if we could get an agreement from his government to open Ban Napho for processing and allow us to resettle eligible Hmong from that camp in the U.S. The Ambassador responded positively to the suggestion.

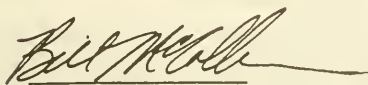
Accordingly, in light of the disturbing information about the Hmong refugee leaders, we request that as expeditiously as possible you raise with the appropriate high officials of the Government of Thailand our interest in gaining access to Ban Napho for the purpose of processing eligible Hmong for resettlement in the United States. We would also request that the Department of State investigate the accuracy of the report that the Hmong leaders in Ban Napho have been arrested.

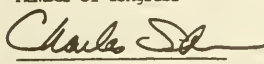
The Hmong have fled Laos because of problems arising from their alliance with the U.S. during the Vietnam War. There are a number of critics who believe that we have abandoned them. We hope that this is not the case.


Sincerely,

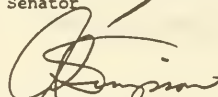

BENJAMIN A. GILMAN
Member of Congress

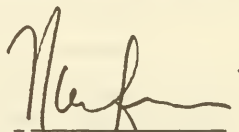

HOWARD L. BERMAN
Member of Congress

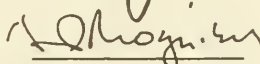

BILL MCCOLLUM
Member of Congress


CHARLES SCHUMER
Member of Congress


TED KENNEDY
Senator


ALAN SIMPSON
Senator


PAUL SIMON
Senator


DANIEL P. MOYNIHAN
Senator

UNITED NATIONS
HIGH COMMISSIONER
FOR REFUGEES

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NATIONS UNIES
HAUT COMMISSARIAT
POUR LES RÉFUGIÉS

Délégation en Thaïlande

P.O. Box 3-121, Rajdamnern
BANGKOK 10800, Thailand

HCR/BKK/MISC/3275

7 December 1994

Dear Hon. Gilman, Leach and Gunderson:

I have received your letter dated 22 November 1994.

I should like to inform you that the detention of Hmong Leaders from Ban Napho Camp in the Immigration Detention Center (Suan Phlu) is the decision of the Royal Thai Government in conformity with conclusion of the CPA Technical Meeting held in Bangkok on June 1-2, 1994, with the active participation of the U.S. Delegation. During this meeting it was decided to separate those "actively working against voluntary repatriation". This is more than a simple expression of opinion (see annex). The six Hmong leaders were identified as such hard-core anti-volrep elements and were consequently separated from the general population, who felt intimidated by their action.

UNHCR can only assure that the persons concerned are detained under the best humane conditions available at Suan Phlu. Their well-being, like that of other persons of concern to UNHCR are monitored by full-time UNHCR personnel at Suan Phlu. You might be interested to know that the persons concerned are in good health and are receiving preferential treatment, including English classes. They are only complaining of boredom.

...2/-

FAX: (202) 225-6195

Hon. Benjamin A. Gilman, James A. Leach and Steve Gunderson
Congress of the United States
2235 Rayburn House Office Building
Washington, D.C. 20515-4903
U.S.A.

The measures you propose with regard to photographs would be seen as an insult to a sovereign country, namely the Royal Thai Government. I trust therefore that you will give credence to my word as the UNHCR Representative that the persons concerned are in no danger, that they are in good health that their well-being is monitored by UNHCR.

Yours sincerely,

A handwritten signature in dark ink, appearing to read 'R. von Arnim', with a long horizontal flourish extending to the right.

Ruprecht von Arnim
Representative in Thailand

cc: UNHCR Headquarters, Geneva (RBAO)
UNHCR B.O. Washington

Report To The Congress of the United States:

*Fact-Finding Mission to Thailand Regarding the Status of
Hmong/Lao Refugees and Asylum Seekers
December 28, 1994-January 2, 1995*

IV. Major Findings and Recommendations

A.) Forced Repatriation of Hmong/Lao Refugees in Ban Napho Camp, Suan Phlu, Si Khew, Phanat Nikhom and elsewhere in Thailand is occurring. Human rights violations against them are serious. Many thousands of Hmong/Lao refugees are in imminent danger unless the U.S. Congress acts quickly and firmly to stop the way the current policy is being implemented. Despite the staunch official denials of all of the authorities and many of the NGOs under contract with the U.S. Department of State, a policy of forced repatriation and coercion of ethnic Hmong/Lao refugees is now occurring at Ban Napho Camp in Thailand by some Thai RTG authorities with the assistance of some officials in the UNHCR with the tacit approval of the U.S. Department of State. This is especially deplorable because many of these Hmong assisted and fought as allies with the United States during the Vietnam War—or were involved in the post-War anti-Communist resistance and are therefore at substantial risk if sent back to the LPDR regime.

Currently, it is accurate to describe Ban Napho Camp as a concentration camp for forced and coercive repatriation, not a refugee camp. The U.S. Embassy in Bangkok and the U.S. Department of State were aware of the situations at both Ban Napho Camp and Suan Phlu and did little to improve them. In their eagerness to help improve diplomatic relations with the LPDR and Royal Thai Government—even after requests by senior Members of the U.S. Congress to press the LPDR, Thai Government and UNHCR—they have apparently put little diplomatic pressure on senior levels of the Royal Thai Government, UNHCR or LPDR. The six at Suan Phlu were not visited by the U.S. Embassy since their imprisonment in September of 1994. The UNHCR visited them in person only once. (*Note: U.S. State Department funded NGO leader Lionel Rosenblatt, former President of Hmong/Highlander Development, visited the six Hmong at Suan Phlu on January 9, 1994, just after the Delegation's visit; see letter by the six prisoners about the visit in V. Addendum—Supporting Documents, Exhibit VV*). The repatriation of Hmong/Lao refugees at Ban Napho Camp has not been halted and the Camp opened so that the Hmong/Lao refugees there can be resettled in third countries.

Despite a significant body of proof, the U.S. Department of State, the NGOs they fund, along with the three signers of the Tripartite Agreement (Thailand, Laos and the UNHCR) all staunchly maintain a hard line policy, stating that reports of forced repatriation and persecution of Hmong returnees in Laos are merely the propaganda of the anti-LPDR rebels and have no basis in fact.

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Some scholars, refugee advocates, public policy analysts and Members of the U.S. Congress believe that this hard line policy is aimed at covering up the evidence and proof of forced repatriation and human rights violations against Hmong/Lao refugees so that the signers of the Tripartite Agreement and the U.S. Department of State can further their policy objectives.

Of grave concern to the Delegation are the recent comments from officials of the U.S. Department of State stating that the Hmong/Lao repatriation and closure of refugee camps in Thailand like Ban Napho is proceeding ahead as schedule with no delays, despite the recent documented murder in Laos of two Hmong refugees by Pathet Lao troops (see V. Addendum—Supporting Documents, Exhibit UU). The Delegation believes that the current policy is a potential recipe for disaster and genocide for Hmong/Lao refugees who are returned to the LPDR.

B.) Future U.S. Congressional funding to Thailand, the UNHCR and U.S. State Department should be linked to the level of their cooperation on the current Hmong/Lao refugee crisis. U.S. Congressional funding to Thailand, the UNHCR and the U.S. Department of State for the future should be reviewed now by the U.S. Congress (for Fiscal Year 1996, Fiscal Year 1997 and Fiscal Year 1998) and should be linked—decreased or increased—to the level of their cooperation regarding the imprisoned six Hmong Camp leaders, as well as the Hmong/Lao refugee situation at Ban Napho, Suan Phlu, Si Khew, Phanat Nikhom and Wat Tham Krabok. U.S. aid to Thailand stood at \$8,171,000 in economic assistance and \$2,349,000 in military assistance in Fiscal Year 1993. If Thailand, the UNHCR and U.S. State Department permit the Hmong/Lao refugees at Suan Phlu, Si Khew, Ban Napho Camp, Phanat Nikhom and Wat Tham Krabok to leave Thailand for resettlement to third countries other than Laos (such as the U.S., Canada, Australia, France, etc.), then aid from the U.S. Congress to Thailand the UNHCR and the U.S. State Department should be increased. On the other hand, if Thailand, the UNHCR and the U.S. Department of State do not allow the remaining Hmong at Ban Napho Camp and Wat Tham Krabok to leave for third country resettlement or remain temporarily in Thailand, the United States' Congress should cut their funding. Likewise, if Thailand continues to forcibly repatriate Hmong/Lao refugees from Ban Napho Camp and elsewhere in Thailand to Laos, the United States should cut its funding.

For many years, the Thai people, the Royal Thai Government, UNHCR and U.S. State Department have been very helpful to the Hmong/Lao refugees and it is hoped that they will again help these refugees in a more positive and pro-active manner at Suan Phlu, Ban Napho, Si Khew, Phanat Nikhom, Wat Tham Krabok and other places in Thailand to close the final chapter of the refugee saga.

C.) The information flow through official and most NGO channels regarding the status of Hmong/Lao refugees in Thailand and Laos is seriously flawed and unreliable. There is a disturbing pattern of inaccurate and misleading information being provided to Members of Congress through official and NGO channels. It is the conclusion of the Delegation that the general information flow to the U.S. Congress—through official and NGO channels—regarding the status of Hmong/Lao refugees in Thailand and Laos is seriously flawed. U.S. taxpayers' money and funding have generally flowed to those sources who are asked to report on the repatriation program they are in charge of helping to implement (see V.

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Addendum—Supporting Documents, Exhibit TT chart regarding information and funding flow). Inaccurate and often very misleading information has been the result. This may help to explain why independent investigative journalists like Jane Hamilton-Merritt, Marc Kaufinan, Brian Bonner as well as independent human rights organizations like the Lawyers Committee for Human Rights have often found the situation with regard to Hmong/Lao refugees in Thailand and Laos to be much different than reported through official or NGO channels.

The English language classes and preferential treatment that the UNHCR's Ruprecht von Arnim reported to U.S. Congressmen Gilman, Leach and Gunderson, that the six Hmong/Lao refugee Camp leaders from Ban Napho imprisoned at Suan Phlu were receiving, was not accurate according to the six refugees. The six told the Delegation that they never received any English language classes or instruction and said they had no better treatment than anyone else in Suan Phlu Detention Center. They were not suffering from boredom as von Arnim told the Congressmen (see **IV. Addendum—Supporting Documents, Exhibit OO and Exhibit PP**), but from a much more serious and troubling situation.

Of concern is the aggressive effort that seems to have been made by a number of UNHCR, U.S. State Department and U.S. Embassy employees—and their NGO's—to mislead Members of the U.S. Congress, and their staff, and deny that the current policy of forced repatriation at Ban Napho Camp and elsewhere in Thailand is taking place. Inconsistency between a statement by a U.S. Department of State official quoted in the California Hmong Times on December 15, 1994, and what the Delegation discovered at Suan Phlu was significant. The report that one of the six Ban Napho Camp leaders imprisoned at Suan Phlu—the Lowland Lao (Mr. Kham Pham)—had volunteered to return to Laos and had been returned to Ban Napho Camp was discovered to be false on both counts (see **V. Addendum—Supporting Documents, Exhibit UU**).

Even more disturbing is the attempted effort by authorities—including a number of key U.S. State Department officials—to discredit much of the wide body of historical proof of forced repatriation as merely the fabricated propaganda of the anti-Communist resistance. Historical revisionism appears to be the current policy of the Clinton Administration's Department of State regarding forced repatriation and persecution of Hmong/Lao returnees in the LPDR.

D.) The U.S. Congress should boldly reduce most U.S. taxpayer funding to the LPDR regime for a number of important reasons, including the treatment of Lao/Hmong refugees repatriated there.

U.S. economic and military aid to the Lao People's Democratic Republic (LPDR) regime should be dramatically cut. Congress should cut most—if not all—U.S. foreign assistance to the LPDR—including narcotics control funding—until: 1) it significantly improves its human rights record and allows freedom of speech, freedom of the press and freedom of movement in Laos; 2) it removes Cold War-era Communist officials from its ranks and agrees to a democratic, multiparty, political system which would include participation by former Hmong and Lao leaders of the Royal Lao Government; 3) it reveals the names of the Pathet Lao security officials who were last seen with Hmong repatriation leader Mr. Vue Mai, and who may have kidnapped and even murdered him; 4) it stops accepting legal Hmong refugees—as defined under international law—that have been subjected to mandatory or forced repatriated from Ban Napho Camp, Wat Tham Krabok, Phanat Nikhom and Si Khew Detention Center in Thailand in violation of the Luang Prabang Tripartite Agreement; 5) its military and security forces stop production and trafficking in illegal

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narcotics; 6) it grants complete and total amnesty to Hmong and Lao officials—including General Vang Pao—of the Royal Lao government that it has “blacklisted” as enemies of the state; and 7) it ceases military and ethnic cleansing operations by Pathet Lao troops against the Hmong—like the recent murder of Chao Moua, Yong Neng Vang as well as two Hmong related to Paul Herr.

Of grave concern to the Delegation are the recent comments of the U.S. Department of State that the Hmong/Lao repatriation and closure of refugee camps in Thailand like Ban Napho is proceeding ahead as schedule with no delays despite the recent documented murder in Laos of two Hmong refugees by Pathet Lao troops (see V. Addendum—Supporting Documents, Exhibit UU). The Delegation believes that the current policy is a potential recipe for disaster and genocide for Hmong/Lao refugees who are returned to the LPDR.

E.) The U.S. Congress should strongly press the U.S. State Department, Thai Government and UNHCR to stop forced and coercive repatriation and open Ban Napho Camp, Suan Phlu and Si Khew so that Hmong/Lao refugees there can be resettled quickly in third countries. At the highest levels, the U.S. Congress should ask and press the U.S. Department of State, the RTG (Thai Foreign Ministry, MOI and Thai Military) and UNHCR to immediately stop the repatriation of Hmong refugees and asylum seekers from Ban Napho Camp and to open the camp fully so that all of the refugees there can leave Thailand and be resettled in third countries. The Thai MOI and UNHCR’s role in the arrest, imprisonment and coercion of the six Hmong/Lao Camp leaders from Ban Napho at Suan Phlu Detention Center is deplorable. Equally deplorable is the apparent conspiracy of silence from the U.S. Embassy in Bangkok and U.S. Department of State in apparent continued support of the arrest and imprisonment of these six. U.S. Embassy or U.S. Department of State personnel apparently never visited the six Hmong/Lao prisoners, instead relying on UNHCR who was in turn also apparently dependent on the Thai MOI. The U.S. Congress should press the U.S. Department of State and Thailand to immediately release these six political prisoners and allow them to leave Thailand for third country resettlement.

F.) The U.S. Congress should link future U.S. military sales to Thailand that require Congressional approval, and “Cobra Gold” funding to the level of Thailand’s cooperation regarding the release and resettlement in third countries of the six Hmong/Lao political prisoners in Suan Phlu and the refugees at Ban Napho Camp, Phanat Nikhom Camp, Si Khew and Wat Tham Krabok. Future U.S. military sales to Thailand requiring U.S. Congressional approval should be linked to the level of Thailand’s cooperation regarding the imprisoned six Hmong Camp leaders as well as the Hmong situation at Ban Napho, Suan Phlu, Si Khew, Phanat Nikhom, Wat Tham Krabok and elsewhere in Thailand. These Vietnam War veterans, and their families, who served honorably with the U.S. Armed Services and war effort are owed a special debt of gratitude by the U.S. Department of Defense and national security community.

Likewise, for Fiscal Year 1996, Fiscal Year 1997 and Fiscal Year 1998, U.S. Congressional funding for the size and scope of the annual joint U.S./Thai military exercise “Cobra Gold” should

Report To The Congress of the United States:

*Fact-Finding Mission to Thailand Regarding the Status of
Hmong/Lao Refugees and Asylum Seekers
December 28, 1994-January 2, 1995*

should be linked to the level of their cooperation regarding the imprisoned six Hmong Camp leaders, as well as the Hmong/Lao refugee situation at Ban Napho, Suan Phlu, Si Khew, Phanat Nikhom and Wat Tham Krabok.

G.) Significant numbers of Hmong refugees at Wat Tham Krabok are political refugees that should be screened-in and granted legal refugee status as defined under international law. Their lives and well-being are likely to be at risk if they are returned to the LPDR and therefore they should be given the chance to be resettled in third countries.

The vast majority of Hmong/Lao refugees at Tham Krabok are not drug users. The Thai MOI publicly stated in February 25, 1994, that less than 200 of the Hmong at Wat Tham Krabok are addicted to drugs (See V. Addendum—Supporting Documents Exhibit CC). The Abbott—Pra Chamroon—denies that the Hmong at Tham Krabok are current members of the anti-LPDR resistance. In February 1994, the Thai MOI alleged that the number of Hmong in the resistance at Wat Tham Krabok was 40 (see V. Addendum—Supporting Documents Exhibit DD).

The United States Congress should assist Thailand with Hmong/Lao refugees at Wat Tham Krabok and make sure an addendum covering this situation is negotiated into the Comprehensive Plan of Action (CPA)—with an extension beyond 1995 negotiated for the refugees to be resettled in third countries. The U.S. Congress should make a special effort to ensure the Hmong at Wat Tham Krabok and their families are resettled in third countries in 1995, 1996, 1997 and 1998. Many are combat veterans that served with U.S. forces during the Vietnam War—or fought previously in the post-War anti-Communist resistance. The United States, therefore, bears an important responsibility toward their fate and should play a major role in helping to resettle them in third countries.

The U.S. Congress should press the U.S. Department of State and the Thai government for more cooperation and assistance with this effort so that further arrests are not made at Tham Krabok and so that those 34 now imprisoned are released immediately.

To date, no Hmong/Lao refugees from Wat Tham Krabok are being processed by the Joint Voluntary Agency (JVA), U.S. State Department, RTG, or UNHCR officials for resettlement in other third countries. The United States has a special obligation to these Vietnam veterans.

H.) The U.S. Congress should hold hearings regarding the Hmong/Lao refugee situation in Laos and Thailand to change current policy.

The current policy is disgraceful to America's Vietnam veterans and Armed Services. It is a shameful betrayal of those who served as loyal allies to the United States and Thailand during the Vietnam War. The U.S. Congress should take punitive action against the U.S. Department of State, UNHCR, LPDR and Royal Thai government for their role in implementing the current

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policy. They should also be held responsible for there attempts to cover up and deny the reality of forced repatriation and human rights violations in Thailand and Laos.

The plight of the six Hmong/Lao political prisoners in Suan Phlu and the refugees at Ban Napho Camp, Phanat Nikhom Camp, Si Khew and Wat Tham Krabok and elsewhere should be made a national priority of the U.S. Congress. The U.S. Congress should fight for the release of all six prisoners in Suan Phlu and their families in Ban Napho Camp and Si Khew—they should be released by Thailand and the UNHCR and be allowed to resettle in third countries.

Of grave concern to the Delegation are the recent comments by the U.S. Department of State that the Hmong/Lao repatriation and closure of refugee camps in Thailand like Ban Napho is proceeding ahead with no delays despite the murder in Laos of Hmong returnees (see V. **Addendum—Supporting Documents**, exhibit UU). The Delegation believes that the current policy is a potential recipe for disaster and genocide for Hmong/Lao refugees returned to the LPDR.

Instead of a U.S. Congressional hearing where officials and NGOs that are beneficiaries of the current policy and Tripartite Agreement pronounce their utter denials, the U.S. Congressional hearing should be a grass-roots hearing and should include significant numbers of Hmong-Americans who have family members in Thailand and Laos that are refugees suffering from the current policy.

The role of NGOs in implementing and covering up the current policy should also be investigated. The U.S. Congress should investigate their role in receiving and spending large amounts of U.S. taxpayers dollars to forward the diplomatic agenda of the U.S. Department of State, LPDR, UNHCR and Tripartite Agreement signers in covering-up the forced repatriation of Hmong/Lao refugees and human rights violations against them in Thailand and Laos. The U.S. Congress should investigate why the information flow regarding the status of Hmong/Lao refugees in Thailand and Laos is so inaccurate and flawed (see V. **Addendum—Supporting Documents**, Exhibit TT chart regarding information and funding flow).

UNITED NATIONS
HIGH COMMISSIONER
FOR REFUGEES



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To: Members of the House Subcommittee on Asia
and the Subcommittee on International Operations and Human Rights

From: Rene van Rooyen, Representative of the High Commissioner to the United States

re: July 25 hearing on the Comprehensive Plan of Action

Date: July 24, 1995

UNHCR is submitting the attached statement for your consideration and inclusion in the record of the joint Subcommittee hearing on the CPA.

The statement details the technical and advisory role UNHCR played in the refugee status determination procedures established and conducted by each of the regional countries of first asylum in Annex 1, pages 17-26. In UNHCR's view, while the procedures under which the governments of the region conducted screening were far from perfect, there were safeguards built in to ensure that those among the 120,000 screened who had a valid claim to refugee status were "screened-in". UNHCR remains ready to consider any additional evidence or new information about any particular case.

UNHCR takes very seriously the allegations that asylum seekers were screened out for failure to pay bribes or accede to sexual demands. Our investigations to date do not support the proposition that the "screened out" population contains persons who have been wrongly denied refugee status because of corruption. We remain ready to look at any case where it is alleged a person who would otherwise qualify for refugee status was denied for failure to engage in corrupt activities.

The paper describes UNHCR's extensive monitoring of the 73,000 who have returned to Vietnam, including those deported or mandatorily returned by Hong Kong authorities. UNHCR's monitoring is conducted by seven international UNHCR staff with fluent Vietnamese who have visited 25% of returnees. UNHCR's monitoring staff have been able to travel freely throughout the country and have found to date that Vietnam has lived up to its agreement under a Memorandum of Understanding that returnees are treated in a way that assures their safety and dignity in accordance with national and international law.

We hope that this paper will assist you in your deliberations.



THE COMPREHENSIVE PLAN OF ACTION 1989 - 1995

**A REPORT OF THE
UNITED NATIONS HIGH COMMISSIONER FOR REFUGEES**

A REGIONAL APPROACH TO IMPROVING REFUGEE PROTECTION

JULY 23, 1995

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- a. First Instance Interviews
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- c. National Procedures
 - 1. Hong Kong
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- a. Past Persecution
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I. THE COMPREHENSIVE PLAN OF ACTION

1. Following the International Meeting on Indo-Chinese Refugees in 1979, Vietnamese boat people who arrived in Southeast Asia were granted temporary refuge on the understanding that they would be resettled ultimately in western countries. By the late 1980s, that arrangement had begun to erode with unabated outflow which was widely perceived as being largely economically motivated by the prospects of resettlement in the West. Resettlement had slowed significantly, building up large "long-stayer" populations in the first asylum camps. Fearing that they might be left with an insoluble problem, first asylum countries became increasingly reluctant to receive asylum seekers. Hong Kong began to detain new arrivals under harsh conditions as a deterrent measure. Elsewhere in the region, there were serious incidents of "push-off" of boats, rape, assault and killing of asylum seekers, piracy attacks and failure to rescue-at-sea.

2. It was against this sombre background of serious threat to first asylum and the lives of thousands of women, men and children that on 14 June 1989, the International Conference on Indo-Chinese Refugees (ICIR), attended by over 70 governments, adopted the Comprehensive Plan of Action. The CPA established inter-locking and inter-dependent commitments among the first asylum states in Southeast Asia, resettlement countries, and the Governments of Viet Nam and Laos. It provided UNHCR with specific responsibilities, including an exceptional role for monitoring non-refugee returnees in Vietnam.

3. The main objectives of the CPA are:

1) To reduce clandestine departures through information campaigns and through increased opportunities for legal migration under the Orderly Departure Program;

2) To provide first asylum to all asylum-seekers until their status had been established and a durable solution found;

3) To determine the refugee status of all asylum-seekers in accordance with international standards and criteria;

4) To resettle those found to be genuine refugees in third countries as well as all Vietnamese who were in first asylum camps prior to March 1989; and

5) To repatriate those found not to be refugees, and re-integrate them in their home countries.

4. Six years after the adoption of the CPA, clandestine departures from Vietnam, with the life-threatening risks they entailed, have stopped, and more than half a million Vietnamese, including some 130,000 former detainees of re-education camps, have left the country legally under the Orderly Departure Program. Countries in the region have largely respected their commitment to grant temporary refuge to asylum seekers pending their status determination. Screening of some 120,000 persons have been completed and over 80,000 refugees have been resettled since 1989, while more than 73,000 persons have returned to Vietnam. Reflecting the new mood in 1994, for the first time, the numbers of those returning to Vietnam exceeded the numbers resettled from first asylum camps.

5. Despite these achievements, the CPA has come under pressure in recent months with attention being focussed on the fate some 41,000 "screened out" persons in first asylum camps, and proposals for resettlement and re-screening of the persons. The impact on the camp population is clear. The momentum on voluntary repatriation has been totally lost, delaying the closure of the CPA and possibly creating funding problems for the programme in the coming year. Strong criticism has been levied at the screening in first asylum camps and monitoring in Vietnam. This report seeks to clarify some of the concerns raised in relation to these two issues.

II. REFUGEE STATUS DETERMINATION (SCREENING)

6. UNHCR's objective in the CPA screening has been, and remains, to ensure that all those deemed by UNHCR to be refugees are "screened-in". Preliminary results of an internal review of screening in the region indicate that while the procedures were far from perfect, there were safeguards built in to ensure that those with a valid claim to refugee status were "screened in". UNHCR is satisfied that it was given adequate access by the authorities concerned to monitor the screening procedure and application of criteria, and assess the merits of the cases. UNHCR is also satisfied that its views on a case, particularly those which favored the screening-in of a case, were generally accepted by the authorities, or failing that, UNHCR was able to exercise its mandate.

Responsibility of the country of asylum.

7. In assessing the screening it is important to recall that according to paragraph 6(b) of the CPA, "the status of the asylum seeker will be determined by a qualified and competent national authority or body ...". Thus, the decision-making responsibility rested with the sovereign government of the country of first asylum. However, there was an obligation under the CPA for governments to establish screening procedures "in accordance with national legislation and internationally accepted practice" (paragraph 6 of the CPA). The considerable efforts made by countries of first asylum to establish and implement the screening procedures should be recognized. None of the countries concerned were parties to the 1951 Refugee Convention relating to the Status of Refugees, with the exception of the Philippines, and none had previous legislative or administrative experience in determining refugee status. Nevertheless, all of them adopted procedures which allowed access of the asylum seeker to UNHCR, a full interview of the applicant, the services of an interpreter and, if rejected at the first instance, the possibility to seek review by an authority other than the decision-maker at the first instance. Additionally, in Hong Kong applicants had access to the courts for judicial review. The national procedures are individually described in Annex I.

Role of UNHCR.

8. As prescribed in Paragraph 6 (a) of the CPA, UNHCR was to "participate in the process in an observer and advisory capacity." Aware of the lack of experience on screening in the region, the difficulties inherent in screening such a large number of persons, and recognizing the importance of proper screening if other aspects of the CPA, particularly resettlement and repatriation, were to be properly implemented, UNHCR took an active role in assisting the governments to establish of the procedures, and training the government officials in the application of refugee law.

9. UNHCR deployed qualified international lawyers, complemented by local legal consultants, in each of the countries. The specific nature of UNHCR's involvement in the screening process varied according to the national procedure concerned, and is described in full detail in Annex I. What is noteworthy is that, in every country, UNHCR not only monitored either all or a significant proportion of the government's interviews, but itself interviewed either all applicants or at least all those who had been rejected at first instance (in Hong Kong with the help of the UNHCR-created NGO, AVS). In all the countries, except Hong Kong, UNHCR was able to submit its views on the merits of the case before the authorities reached their decision at the first instance. UNHCR also made written submissions to the review body, and attended all meetings of the review bodies, except in Hong Kong where case submissions were made by AVS. Through such close involvement in the procedure, UNHCR was able to identify and intervene on deserving cases.

Application of UNHCR's Mandate

10. UNHCR's authority to recognize refugees under its mandate became virtually a third stage of review in many situations. In all CPA countries, the final decision on refugee status either reflected the concurrence of UNHCR, or if agreement could not be reached, UNHCR was able to "exercise its mandate". This meant that in a case which UNHCR considered meritorious but which the government finally rejected, UNHCR

was able to recognize the person as a refugee under its own mandate, and UNHCR's decision was respected by the government. Recognition under the mandate was an important safety net for ensuring that no person with a valid claim was egregiously screened out and returned to Vietnam.

11. UNHCR used its mandate most extensively in Hong Kong where the refugee status determination process did not provide for UNHCR participation in the actual decision-making. UNHCR recognized 1,542 persons as mandate refugees in Hong Kong. Even though their claims had been rejected on appeal by the Hong Kong Government, the latter permitted them to be resettled under the CPA. UNHCR did not need to exercise its mandate frequently in other ASEAN countries, because of the prominence already given to UNHCR's views in the national procedures. In both Malaysia and Indonesia, virtually all cases positively recommended by UNHCR were accepted by the authorities. In the Philippines, UNHCR mandated 19 persons. In Thailand, UNHCR has identified four mandate cases and is seeking the cooperation of Thai Government as well as the assistance of the U.S. Government in ensuring their resettlement.

Refugee Criteria.

12. Much of the criticism of CPA screening arises from differences of perception in the application of the refugee criteria. The refugee criteria applied in the CPA were "those recognized in the 1951 Convention relating to the Status of Refugees and its 1967 Protocol, bearing in mind, to the extent appropriate, the 1948 Universal Declaration of Human Rights and other relevant international instruments concerning refugees, applied in a humanitarian spirit taking into account the special situation of the asylum-seekers concerned ..." (para 6, CPA). The CPA named the UNHCR Handbook on Procedures and Criteria for Determining Refugee Status as an authoritative and interpretative guide in developing and applying the criteria. (Annex II covers issues relating to the application of refugee criteria in greater detail.)

13. Some critics of the CPA contend that past persecution should be enough to justify refugee status. Such a view is at odds with the 1951 Convention criteria which require the establishment of a well-founded fear of persecution, i.e. the reasonable likelihood of future persecution. Although past persecution can be relevant in establishing the likelihood of continued persecution, it is generally not of itself sufficient for the grant of refugee status. In the context of the numerous requests for review of cases in recent months, it should be pointed out that the determination as to whether or not the person has a well-founded fear of persecution is made at the date of assessment and not the date of departure from the country of origin. In other words, on-going and significant improvements in respect of human rights in the country of origin since the date of departure must be taken into account. Therefore, what may have been a borderline case in the past could well fail to establish a well-founded fear of persecution now in the light of improved conditions in Vietnam.

14. UNHCR's assessments have been based on extensive country of origin information, including reports from NGOs, governments and UNHCR's own monitoring staff in Vietnam. The information obtained from UNHCR's monitoring of returnees, in conjunction with broader changes in Viet Nam, particularly in the relaxation of controls over the population, have obviously influenced the assessment of the likelihood of future persecution if the asylum-seeker were to return to his/her country of origin.

15. Nevertheless, given the special situation of the Vietnamese asylum seekers, UNHCR has advocated a degree of flexibility "in a humanitarian spirit", and advocated recognition of refugee status where past persecution has been so severe that the person could not reasonably be expected to resume a normal life in Vietnam. Thus, persons who had suffered atrocious forms of persecution over a significant period, such as significant periods of incarceration in re-education camps or confinement to New Economic Zones, have been recognized as refugees, regardless of whether or not they still faced a reasonable likelihood of persecution if they returned to Viet Nam.

16. UNHCR does not discount the possibility of egregious cases, but believes that, given its intensive assessment of cases, both during screening and subsequently in the context of mandate determination, the possibility is reduced to a very small number. As stated previously, UNHCR remains willing to review a case in which new and substantive elements are brought forward.

17. UNHCR received a list of 48 cases from the State Department in late 1994, of which 12 had not completed the national procedure and were eventually "screened in", 2 were granted refugee status under UNHCR's mandate, and 2 repatriated voluntarily to Vietnam where they are being monitored by UNHCR. UNHCR has received recently 15 cases from Congressman Bereuter, 12 of which were also submitted by Congressman Smith. One of the 15 was recognized as a mandate refugee by UNHCR in Thailand sometime ago and is awaiting Thai government clearance for resettlement, while another has been accepted for family reunion in the United States. Several others were subject of previous review and correspondence with NGO advocacy groups. UNHCR has also received a list of 108 names from one NGO, on which many have no new and relevant information, calling into question the usefulness of a review under such circumstances.

Corruption Allegations.

18. Corruption cannot be ruled out in a situation where the asylum seekers and government screening teams were frequently living in the same camp, where large sums of money were being transmitted from abroad, and where recognition of refugee status resulted immediately in resettlement abroad. Rumours of bribery have been floating for sometime in the camps, but despite all efforts, concrete evidence has been hard to obtain. Allegations by NGOs surfaced only in 1994, after the screening had been completed in most of the first asylum countries.

19. Long before the NGO allegations, UNHCR had raised the issue of corruption with some of the national authorities, requesting remedial action. More recently, in the case of Indonesia, NGO reports were forwarded immediately to the Indonesian government for its investigation in July 1994. Allegations against named Malaysian officials were also passed on to the authorities for their necessary action. The Indonesian authorities responded to UNHCR in November 1994 that they had made internal investigations, which did not find any substance to the allegations. The Malaysian authorities responded that the two officials concerned had been reprimanded and removed from their posts, but as they did not have a role to play in the screening process, their actions had not affected the integrity of the decisions. Recent allegations against the Philippines authorities are being investigated, but as the NGO report itself notes, UNHCR staff took up the matter with the authorities as far back as 1991.

20. UNHCR has taken very seriously the allegations that refugees have been screened out for failure to pay bribes or to accede to sexual demands in the first asylum camps in the region. The Director of Policy Planning and Operation and the Senior Executive Assistant of the High Commissioner undertook a mission to the region in April, following which a region-wide internal review was instigated in May this year to assess the quality of screening and the impact of corruption. (Hong Kong was not included because of a previous very thorough review to determine whether there were any refugees in the camps who could be recognized under UNHCR's mandate). The results in Malaysia, Indonesia, Thailand and the Philippines do NOT support the proposition that the "screened out" population contain persons who have been wrongly denied refugee status because of corruption. On the contrary, what the review has shown is that a large number of cases were recognized by the authorities in Indonesia, despite UNHCR's clear recommendation that in its view they did not qualify for refugee status. It is not UNHCR's policy generally to question governments when they adopt a more generous interpretation of refugee criteria than the Office itself. It has not been possible to confirm with any certainty whether some of these decisions were motivated by corruption or simply by a different interpretation of the criteria. However, it cannot be ruled out that corruption inflated the numbers of those "screened in".

21. No corruption allegations have been made against any international UNHCR staff but two local consultants have been named by NGOs in Indonesia and Philippines. While the Philippines allegations are being pursued, following the internal enquiry on the Indonesian screening, UNHCR has requested the Indonesian authorities to initiate criminal investigations in one of the cases. Neither of the two persons have been in UNHCR's employment for a while.) Asylum seekers' cases handled by these consultants have been most carefully reviewed by the UNHCR investigation team to ensure that the negative decisions were fully justified. UNHCR has also taken a number of management measures to review and tighten control of its role in the implementation of the CPA.

22. UNHCR remains ready to look into any specific cases in which it is alleged that a person who would otherwise qualify for refugee status has been denied it for failure to pay bribes or accede to sexual favors.

III. MONITORING OF RETURNEES IN VIETNAM

23. UNHCR's monitoring efforts in Viet Nam are by far the most complex, far reaching and systematic individual case follow-up of any repatriation operation to date UNHCR's role in monitoring nationals in their own country who, unlike refugees, would not normally benefit from international monitoring, is remarkable as is Vietnam's full acceptance of that role. UNHCR has been monitoring Vietnamese returnees since voluntary repatriation began in March 1989. The monitoring officers are international staff members who speak (often several) local languages and are thoroughly familiar with Vietnam. There are seven full time experienced expatriate monitoring officers, four based in the north, three in the south. (UNHCR's national staff in Hanoi and the south are all directly recruited and employed by UNHCR with contracts issued by UNHCR Geneva.)

Access to Returnees

24. UNHCR has conducted over 18,000 individual monitoring visits (persons seen) in Viet Nam. Nation-wide, more than 25 percent of the 73,814 returnees have been visited in their homes, in addition to those calling at the UNHCR offices or met at the reception centers. Personal visits of at least 50 percent of all returnees have been accomplished in almost half of all provinces and districts. 50 of the 52 provinces which have received returnees have been visited -(the remaining two provinces have only three returnees). Of Viet Nam's 560 districts, 359 have returnees and UNHCR has visited 337 of them. In some of the outlying provinces, UNHCR monitoring officers have been the first foreigners to be seen since 1975. Up to 10 percent of the visited returnees have been monitored twice or more often.

25. The returnees in Viet Nam are also indirectly monitored by other members of the international community who are actively involved in assistance programs in Viet Nam. Amongst the NGO missions to Viet Nam which have had a monitoring component have been ISS HKG (May 1989); British Refugee Council (September 1989); Norwegian Refugee Council (August 1990); AUSTCARE (April 1991); U.S. NGO delegation (December 1991); HKCAR/Christian Aid to Refugees (April 1993); NARV (until April 1995). There are also four NGOs working in the south of Viet Nam (SEARAC, ICMC, Consortium, World Vision). Important note must also be taken of the European Community International Bridging Programme which set up and monitored small business loans to returnees. This programme had 23 expatriate and 221 local staff, and was extensively involved in the reintegration of returnees.

26. UNHCR meets all returnees upon arrival at the airports in Hanoi and Ho Chi Minh City. Monitoring officers subsequently visit both the Hanoi (Dong Ngac) and Ho Chi Minh City (Thu Duc) reception centers to give all returnees further opportunity to freely address enquiries or communicate reintegration concerns. All returnees are provided with the address and telephone number of the relevant UNHCR Office. With unrestricted access

to UNHCR offices and fast improving means of communication, particularly in the south monitoring officers are increasingly receiving requests and enquiries from returnees who visit, write, telephone, and, in one case, even sent facsimile messages!

Monitoring Methods

27. About one-third to one-half of the monitoring team's work consists of visiting returnees in their homes throughout the country. The agenda and location for each monitoring mission is set by UNHCR. Only the general dates and province are announced to the SRV authorities, while the monitoring officers independently choose which returnees to visit on the basis of a UNHCR database containing relevant information on all CPA returnees. Monitoring visits are made in order of the following priorities:

- . to investigate all allegations regarding either protection or reintegration related issues. These may be communicated to UNHCR in Viet Nam from a great variety of sources (the returnees themselves, their relatives or neighbors, UNHCR Offices in the countries of first asylum, governments, NGOs, international and local press, etc.);

- . to counsel vulnerable returnees, such as unaccompanied minors, medical/psychiatric cases, and victims of violence, and, where possible, to refer them to appropriate agencies or NGOs;

- . to conduct "tracings" and "home assessments" in order to assist UNHCR Offices in the countries of first asylum to decide on the best durable solution for vulnerable cases (especially unaccompanied minors) and/or to prepare their repatriation and reintegration;

- . to provide regular "monitoring presence" in all provinces and districts with high returnee concentrations and visit as many returnees as possible and to interview them about their reintegration including aspects such as repatriation formalities, financial assistance, current economic situation and prospects, etc.;

to gather relevant information about the social, political and economic conditions in Vietnam.

28. Monitoring officers generally visit returnees in their homes to give returnees the opportunity to inform UNHCR of any problems or grievances, many of which the monitoring officers are able to solve by providing advice and information or by referring the returnee to an appropriate office or NGO. Data is collected on a systematic manner on the reintegration of each visited returnee for comparative purposes. All interviews are structured around a standardized "monitoring form" covering relevant issues of protection, administrative, social, and economic reintegration. They are conducted in an informal and open manner, encouraging returnees to freely express their problems or concerns. Creating a UNHCR presence through regular monitoring missions in communities with returnee concentrations also encourages other returnees, who may not have been visited, to approach UNHCR on their own if they have issues of concern.

29. Monitoring officers' counterparts and hosts in the provinces are the respective Labor and Social Welfare Departments (DOLISA) under the provincial Peoples' Committees and the SRV Government's Ministry of Labor, War Invalids and Social Affairs (MOLISA). These departments also organize and administer the local distribution of UNHCR's individual financial assistance, and support the planning and implementation of UNHCR micro-projects. On many but not all monitoring visits, UNHCR staff may be accompanied by DOLISA staff. The presence of these officials can be quite helpful, allowing many questions relating to assistance, vocational training, and other matters to be resolved on the spot, and most returnees do not appear to be inhibited by their presence, openly criticizing the authorities frequently. However, whenever necessary, UNHCR monitoring officers have become adept in making discreet arrangements to ensure that the returnee is interviewed in private.

Problems Faced by Returnees.

30. The cumulative experience of many thousands of monitoring visits has led UNHCR to perceive a gap, ironically, between its mandated function - providing international protection - and the real demands of returnees - economic assistance. While protection issues remain at the core of UNHCR's tasks and receive most attention from outside observers, the vast majority of returnees, facing no protection problems whatsoever, request UNHCR attention, advice and assistance only to improve their economic situation.

31. To date, the most common complaints by returnees have related to economic difficulties, bureaucratic problems, or delays in the payment of their repatriation grants (up to US\$440 per adult or child - considerably more than the average annual wage in Viet Nam). UNHCR's intervention has generally helped to correct the problems. The issue of household registration is used by UNHCR as an indicator of reintegration. The time frame for a returnee to be re-registered, as well as the significance of household registration, or Ho Khau varies according to province and region. The process can vary from a week in some areas to several months in other regions where it is of lesser administrative significance but takes usually about a month.

32. The number of "problematic" individual cases has been recently assessed at less than 1% by staff of UNHCR, and international and non-governmental organizations extensively involved in returnee reintegration programmes. UNHCR believes that the Vietnamese authorities have upheld their commitments under the Memorandum of Understanding on safe return of Vietnamese to ensure that returnees are treated in a way that assures their safety and dignity in accordance with national and international law.

33. This includes the waiver of prosecution and of punitive and discriminatory measures. Such waivers do not, however, exempt returnees from prosecution for criminal offences. A number of returnees have been arrested for alleged criminal offences committed prior to their

departure. UNHCR is aware of 88 returnees who are or have been arrested, and of one ORP returnee having been executed for double murder and robbery. UNHCR obtains information on such cases during monitoring visits, from the transit centers, from the Hong Kong authorities and other sources. Currently, UNHCR Viet Nam is seeking from the Vietnamese authorities a more systematized record of arrest cases and more cooperation on access to persons arrested on criminal charges.

34. UNHCR welcomes any information that could provide a basis for investigations into the alleged mistreatment of returnees.

IV. ORDERLY RETURN ARRANGEMENTS

35. Recent decline of interest among the "screened out" has been matched by a parallel interest among some governments in the region to promote "orderly return" (ORP). ORP agreements are foreshadowed in the CPA and reflect the accepted international practice of returning individuals who have no legal right to remain in a particular country to their home countries. The first ORP agreement was signed bilaterally between Hong Kong and Vietnam in 1989, and some 1500 persons have been returned under it. UNHCR does not participate or finance any part of it. However, UNHCR monitors the returnees once back in Vietnam in the same manner as other returnees.

36. Since then ORP arrangements have been signed with Vietnam by Indonesia (2 October 1993), Malaysia (24 January 1995), the Philippines (5 February 1995) and, it is expected soon, by Thailand. Under such 'Orderly Return' arrangements, non-refugees who have been cleared for return to Viet Nam can be returned home under usual immigration practices, without having to volunteer. These arrangements differ from that existing between Hong Kong and Vietnam, and do not envisage the use of force.

37. In keeping with the special and exceptional role which UNHCR has undertaken on behalf of non-refugees in the context of the CPA, UNHCR facilitates the ORP process by channelling the clearances from the

Vietnamese authorities, assisting with necessary health certificates and medical documents and funding transportation costs. UNHCR also undertakes to provide the same level of material assistance to ORP cases, and to monitor their well-being in Vietnam as for voluntary repatriants.

38. It should be added that material assistance, including food, shelter, health care and social services continue to be provided by UNHCR to the "screened-out" population in the all the first asylum camps. UNHCR also retains a presence in all the camps to ensure humane treatment as well as promote voluntary repatriation. UNHCR's presence in Galang was recently strengthened with an international protection officer.

V. CONCLUSION

39. Despite the criticisms and shortcomings, the achievements of the CPA have been significant in assuring temporary refuge for asylum seekers and resolving a mixed outflow of refugees and economic migrants. While there have been some problems in the screening process, UNHCR has made every effort to ensure, to the greatest degree possible, fair application of the criteria. To the extent that some shortcomings are inherent in the process, UNHCR remains willing to review cases, but does not agree that the screening was flawed or that such large numbers have been egregiously screened out that a massive re-screening or resettlement from first asylum camps should be launched. Furthermore, false expectations that some of the economic migrants still in camps could receive refugee status and be resettled directly to the West have, in the past, led to violent upheavals. They might, moreover, also reopen the risk of a new exodus, with serious humanitarian and political consequences.

40. While some flexibility may be possible in a small number of cases on humanitarian or family reunion grounds, by and large the population in the camps are non-refugees, and must now return to their country of origin, as

some 73,000 others have done. The results of UNHCR's monitoring as well as the assessment of other international organizations working in Vietnam confirm that reintegration has been safe and smooth, and that Vietnam has shown clear political will to facilitate their return and reintegration.

41. In March 1995, at the Sixth Meeting of the Steering Committee of the CPA, all the countries involved in the CPA acknowledged the need to bring some finality to the process, which has been going on for six years. While UNHCR continues to believe that voluntary repatriation remains the best solution, it is also clear that countries of first asylum are deeply frustrated with the slow pace of return and cannot be expected to bear the burden indefinitely. Pressure is building up in the camps on the one hand to push repatriation efforts and on the other to resist return.

42. The international criteria and commitments of the CPA will clearly not meet the wishes of all the Vietnamese boat people to be considered as refugees and resettled. New and more innovative measures will be needed to bring a humane solution to the plight of the boat people as well a successful conclusion to the CPA. UNHCR stands ready, within its mandate and capacity, and in conformity with the CPA, to assist all parties in their effort to devise an appropriate response.

Annex I

Description of Screening Procedures

As of March 1989, all new arrivals in first asylum countries underwent status determination. (Hong Kong, which had been particularly affected by an increase in outflow from North Viet Nam in 1987, instituted a form of status determination in June 1988 which was subsequently brought into line with CPA standards). The procedures established by each first asylum country varied, but all countries, under the framework of the CPA, provided basic procedural guarantees, such as interpreters, the right to a hearing and the right to an appeal on the merits.

Paragraph 6(b) of the CPA, regarding the procedure to be followed for refugee status determination, elaborated the procedural guarantees as follows:

"(d) The procedures to be followed will be in accordance with those endorsed by the Executive Committee of the Programme of the United Nations High Commissioner for Refugees in this area. Such procedures will include, inter alia:

(i) The provision of information to the asylum-seekers about the procedures, the criteria and the presentation of their cases;

(ii) Prompt advice of the decision in writing within a prescribed period;

(iii) A right of appeal against negative decisions and proper appeals procedures for this purpose, based upon the existing laws and procedures of the individual place of asylum, with the asylum-seeker entitled to advice, if required, to be provided under UNHCR auspices."

a. First Instance Interviews

In all countries, the interviewing officer used the asylum-seeker's casefile which contained, among other things, a bio-data sheet compiled either by UNHCR staff (in the four ASEAN countries) or by the government (in Hong Kong). Bio-data about the applicant included date of birth, place of origin, family composition, education attained, occupation in country of origin and a brief summary of their background. The bio-data form streamlined information gathering and provided a broad background statement regarding the applicant which assisted the interviewing officer in the first instance interview.

In Indonesia and the Philippines, the case files also included pre-screening interview reports prepared by UNHCR-appointed legal consultants. Pre-screening interview reports identified the facts relevant to and supportive of the asylum-seeker's claim to refugee status. Those conducting the refugee status determination interviews would then have at their disposal pre-interview information which they could use to cross-reference with the information obtained during the course of the main interview.

In all five first asylum countries, the government officials appointed to conduct the interviews were formed into teams. While the number of teams depended on the requirements of the asylum country, each team included a government official and an interpreter (often externally hired, but sometimes recruited from the "pre-CPA" refugee camp population). The team might also include a UNHCR-appointed legal consultant who monitored the interview. Legal consultants would either sit in on each interview, as in Malaysia, or they would sit in on cases randomly, as in Thailand, Hong Kong and the Philippines. In Malaysia, the UNHCR consultants submitted a report together with an assessment of facts to the government. In the other countries, the notes taken by UNHCR at any stage of the proceedings formed part of UNHCR's own files and were used in submissions or interventions with the governments concerned.

b. Appeals/Review Stage

The refugee status determination procedures in all CPA countries provided for review of first instance negative decisions. Applications for review had to normally be submitted within a period of time ranging between 7 and 37 days. UNHCR counselled rejected cases on the appeals procedures either on an individual or group basis. The appeals/review submissions were normally written by the applicant himself or in his name by friends or Vietnamese volunteers trained by UNHCR or UNHCR financed appeals lawyers as in Hong Kong. Occasionally, overseas lawyers, hired by the applicant's relatives or friends, would also make submissions for review. In Hong Kong there were special provisions for formal legal representation.

The Appeals Boards (or Refugee Status Review Board, Review Committee, Appeals Committee depending on the country) were comprised of both government officials and UNHCR observers except in Hong Kong where there was no UNHCR participation on the Review Board. Where UNHCR was present, its views were normally given great weight in arriving at a final decision. In Hong Kong where UNHCR was not present at review, UNHCR-appointed AVS legal counsellors were able to make submissions on behalf of meritorious cases. If there was no agreement, which was generally quite rare, UNHCR was subsequently able to exercise its mandate if its view differed from a negative decision of the Appeals Board.

A synopsis of the procedures which existed in each of the five CPA first asylum countries follows:

c. National Procedures

1. HONG KONG

BACKGROUND: During early 1988 it became apparent to the Hong Kong authorities that resettlement countries, in applying refugee criteria to the Vietnamese boat people, were reaching the conclusion that the majority of cases did not satisfy the definitional requirements of the 1951 Convention relating to the Status of Refugees. During the first five months of 1988 only 1,100 persons were resettled as refugees whereas 5,000 asylum-seekers arrived in Hong Kong.

Hong Kong initiated screening of Vietnamese boat people from 16 June 1988. The procedures were slightly amended following an agreement between the Hong Kong Government and UNHCR in September 1988 and subsequently changed again to bring them in line with CPA requirements.

PROCEDURE: At first instance Vietnamese asylum-seekers were interviewed by an Immigration Assistant of the Hong Kong Immigration Department to collect personal data. Once this information was recorded (on a questionnaire agreed with the UNHCR), an Immigration Officer interviewed the new arrivals, recorded their claim to refugee status, "read back" to the applicant and made an initial decision on their status. The decision was reviewed by a Senior Immigration Officer before the applicant was notified of the result. In complex cases where the Immigration Officer was unable to make a decision, the applicant might have been re-interviewed and the decision made by a Senior Immigration Officer. In such cases, a Chief Immigration Officer would review the decision before the applicant was notified of the decision.

An Australian NGO, Jesuit Refugee Service (JRS) assisted UNHCR in providing pre-screening counselling to asylum-seekers on an individual basis.

Interpreters for the interviews were provided by the Hong Kong Government. UNHCR had a right of access to all screening interviews and could offer advice or comment at any stage.

A notice of determination explaining the decision on the claim to refugee status was given to all persons after screening. If screened-in as a refugee, the applicant was moved to a refugee camp to await resettlement. If screened-out as a non-refugee, the applicant was advised that he/she had a right to review.

Second instance: all screened-out applicants could seek review of the negative decision. The review process was initiated by submitting the case to the Refugee Status Review Board within 28 days of receiving the notice of determination. On the same day that the negative status determination decision was made known to the applicant a copy of the complete Immigration Department file was given to the UNHCR legal consultants (AVS) who assisted appellants in the preparation of their appeals. The Refugee Status Review Board (RSRB) was headed by a former judge and composed of government and non-government officials. The Refugee Status Review Board reviewed the facts of the case and the Immigration Department's decision. Once the Board reached its decision on the application for review, the appellant was informed of the result by an officer from the Immigration Department.

AVS, a local NGO body, created and financed by UNHCR, provided appeals counsellors who interviewed all adult Vietnamese boat people and advised them on the merits of their cases. If the AVS counsellors believed that a particular claim warranted reconsideration they would make submissions to the Review Board. If not, the applicants were provided with guidelines to submit their own written submissions.

Under Hong Kong administrative law, asylum-seekers could seek a judicial review of the decision in the Hong Kong courts. Furthermore, the Hong Kong Government recognized UNHCR's right to grant refugee status to a person

under its mandate, even if he/she had been "screened out" by the authorities. UNHCR Hong Kong examined every final decision which resulted in a rejection of refugee status, and as a result of this, exercised its mandating authority in 558 cases for 1,542 persons.

UNHCR's role;

- (a) full access to the pre-screening data collection interviews;
- (b) full access to all screening interviews;
- (c) the right to bring cases of particular concern to the attention of the Hong Kong Government during the pre-decision stage;
- (d) receiving a copy of the complete Immigration Department case file once the first instance decision was made known to the applicant;
- (e) the right to make special representations on behalf of an applicant after the first instance decision on the basis of information made available to UNHCR in the Immigration Department case file; and
- (f) the opportunity to discuss any outstanding issues, whether they be of a general procedural or policy nature, or whether they involve individual cases, at the weekly meetings between representatives of UNHCR and the Chairman and members of the Refugee Status Review Board.

The results of the screening procedures in Hong Kong: 59,508 individuals of were screened of whom, at the first instance, 6,810 have been screened-in as refugees and 52,698 have been screened-out. This represents a rate of 11.4 percent positive first instance decisions. At the appeal stage 1,099 cases involving 2,820 persons have been overturned and 21,884 cases involving 45,747 persons have been upheld. This represents a 5.8 percent rate of positive decisions on review. Taking initial and appeal stage positive decisions together, the rate of screened-in cases is 16.2 percent.

It may be asked why the screened-in rate in Hong Kong is lower than elsewhere in the region. This discrepancy can be accounted, to some extent, by the fact that the majority of the asylum seekers in Hong Kong came from north Vietnam, and usually had less valid claims for refugee status given the historical and political differences. Nearly all the Vietnamese boat people who arrived in ASEAN countries originated in the South of Viet Nam, while about two-thirds of those who arrived in Hong Kong, at least since the late eighties, originated from the North.

2. INDONESIA

BACKGROUND: Refugee status determination began in Indonesia in September 1989 and was completed in September 1993. The responsible government body was P3V (an inter-ministerial task force created to deal with Vietnamese boat people).

PROCEDURE: Indonesia did not allow NGO participation in counselling. Thus, pre-screening counselling of the Vietnamese boat people in Indonesia was left to UNHCR which provided group counselling. Written material on both procedures and criteria, prepared in the Vietnamese language by UNHCR and some NGOs, was made available to the asylum-seekers. Later, a video on the refugee status determination process, prepared by JRS, was also made available.

At first instance, preliminary interviews, which were in effect the substantive interview, were conducted by UNHCR legal consultants who were all qualified lawyers trained by UNHCR on the procedures and criteria for determining refugee status in line with the 1951 Convention relating to the Status of Refugees. The consultants worked under the supervision of a senior consultant or UNHCR Legal Officer who was responsible for reviewing the consultants' written evaluations of each case.

UNHCR's interview reports, together with assessments were then passed to P3V which conducted first instance interviews and reached a decision on each case. UNHCR and P3V met prior to formal announcement of decisions to ensure that UNHCR's views on positive cases were fully taken into account. Screened-out cases were notified of the decisions in writing and screened-in cases were submitted for resettlement. All screened-out cases were informed of their right to submit a written appeal. UNHCR legal consultants, both individually and in group sessions, counselled screened-out applicants on how to submit appeals. UNHCR-trained volunteers assisted applicants in the drafting of submissions for review.

At the second instance appeals were considered by a Review Committee composed of two members of P3V (one as chairman), one member of BAIS (Armed Forces) two officials from the Ministry of Foreign Affairs, and one official from Immigration. A UNHCR legal consultant acted as observer and submitted its views. The Review Committee could either uphold the negative decision, overturn it or refer it to the Appeals Board.

So far UNHCR has not needed to utilize its mandate to recognize cases because, either at the first instance or on appeal, cases recommended by UNHCR were accepted as refugees by the Indonesian authorities.

The results of refugee status determination in Indonesia have been 8,446 cases screened-out and 3,118 cases screened-in at the first instance. The Review Committee overturned 1,407 cases on appeal and upheld the rejections in 2,516 cases. The Appeals Board overturned 77 cases referred to it by the Review Committee and upheld the rejections in 6 cases.

3. MALAYSIA

BACKGROUND: The Malaysian National Task Force for Vietnamese Illegal Immigrants (NTF VII) was responsible for implementing the refugee status determination procedure in Malaysia.

PROCEDURE: Malaysia did not allow NGO participation in counselling. UNHCR briefed all asylum-seekers on a group basis with regard to the refugee status determination process. Refugee criteria were also explained. The asylum-seekers had the opportunity to ask questions before their

interviews. Written statements concerning an asylum-seeker's claims could be submitted at any time, including after the interview. As necessary, Vietnamese language documents were translated in order to be taken into account by UNHCR's legal consultants and Eligibility Officer.

In Malaysia UNHCR established an "Eligibility Unit" which was headed by an experienced UNHCR Eligibility Officer and a team of 6 (later 8) international legal consultants. There were 6 Vietnamese-American interpreters.

At the first Instance applicants were interviewed by a team comprising an interviewing officer (a government designated official), a UNHCR legal consultant (sitting in as an "observer in an advisory capacity"), and a bilingual Vietnamese-English interpreter recruited internationally. After the interview the government officer and UNHCR legal consultant discussed the case. The interviewing officer compiled the interview report and sent it along with a recommendation to the Malaysian Government. The UNHCR legal consultants prepared their own notes and recommendations on the refugee status of the asylum-seeker and submitted them to the UNHCR Eligibility Officer.

The UNHCR Eligibility Officer ensured consistency in the application of refugee criteria and then submitted recommendations to the Malaysian Government.

The decision on the status of each asylum seeker was taken by the Malaysian Government after considering both the recommendation of their own officer and that of UNHCR. The resulting decisions were delivered to the asylum-seekers.

The second instance procedure was initiated by an application being filed by the asylum-seeker within 7 days of receiving the first instance rejection. The asylum-seeker had a further 30 days to submit a written appeal.

At the appeals stage UNHCR again counselled the asylum-seekers about the procedure, including the form and manner of presenting an appeal, and also explained the nature of the criteria for refugee status. The forum for this counselling was the Review Advice Group (RAG) which had legally trained Vietnamese on its staff. Asylum-seekers used the services of RAG in writing and translating appeals.

Appeals were brought before the Refugee Status Review Board (RSRB) which consisted of government officials (headed by the Director of the National Task Force or his delegate) and UNHCR, again in an "observer/advisor" capacity. Decisions were made by consensus after discussion between the government officials and the UNHCR. The Chairman of the Board would endorse the decision, which would then be delivered to the asylum-seeker.

The National Task Force shared appeal documents with UNHCR, which would then be analyzed by the legal consultants and Eligibility Officer for consistency and correctness in the application of the refugee criteria.

Once appeal documents were in order, they would be presented to the RSRB and discussed by government officials and UNHCR. Decisions were reached by consensus.

The results of CPA screening in Malaysia were that all but two persons recommended by UNHCR were granted refugee status. One of the two has voluntarily returned to Viet Nam and the other person's case is being examined for possible mandate action. As of June 1995, 4,069 persons were screened-in and 10,282 screened-out at the first instance. As of end 1994, on appeal 1,443 persons were screened-in and 6,573 screened-out (as of end 1994).

4. PHILIPPINES

BACKGROUND: Refugee status determination began in the Philippines in September 1989 and terminated in December 1993. The responsible Philippines authority was the Bureau of Immigration.

PROCEDURE: At first instance upon arrival of an asylum-seeker in the camp, a registration form containing bio-data was filled out with the aid of an interpreter. During the first week in the camp the asylum-seeker was provided with oral and written information concerning the refugee status determination process by UNHCR.

A UNHCR legal consultant would then undertake a pre-screening interview in order to gather detailed information. Extensive notes would be taken and read back to the interviewee, offering him/her an opportunity to correct any inaccuracies. After the interview the legal consultant prepared a report on the interview, which included an identification of the main issues and assessment of credibility.

The result of pre-screening interviews were discussed each week amongst the legal consultants, a UNHCR Eligibility Officer and the UNHCR Head of Camp. The results of discussions became the basis of reports which were made available to the Philippine Bureau of Immigration Officers who interviewed the asylum-seekers.

UNHCR legal consultants were present at random when refugee status determination interviews took place. The Philippine Immigration Officers would prepare written decisions containing reasons for denial or recognition.

Notifications of decisions were made in groups, at which time UNHCR would explain to screened-in persons resettlement procedures and to screened-out persons refugee status determination appeal procedures.

UNHCR reviewed all first instance decisions in order to identify wrongly screened-out cases.

At second instance, from 1991 the asylum-seekers received free legal assistance from two NGOs, Jesuit Refugee Services, Legal Assistance to Vietnamese Asylum-Seekers. (In the Philippines the NGOs were allowed to participate only after the completion of all first instance interviews.) The Philippines Appeal Board cooperated by scheduling hearings so as to facilitate the preparation of appeals. A "Vietnamese Appeal Board", composed of Vietnamese paralegals, also provided assistance.

UNHCR participated in the activities of the Appeals Board as an observer and had ample opportunity to present its views which were usually accorded great weight. In only 13 cases involving 19 persons did UNHCR and the Appeals Board ultimately disagree. In these cases UNHCR recognized the persons as refugees under its mandate.

UNHCR was involved at every stage of the process. Its role included:

- (a) Collection of bio-data and initial information relating to the applicant;
- (b) Pre-screening interviews to gather detailed refugee claim related information;
- (c) Providing UNHCR reports and recommendations to the Bureau of Immigration Officers who did the interviews and made the first decisions;
- (d) Being present at the first instance interviews;
- (e) Counselling rejected asylum-seekers about appeals procedures;
- (f) Reviewing all cases rejected at first instance;
- (g) The full opportunity to present UNHCR's views before the Appeals Board; and
- (h) The possibility of exercising UNHCR's mandate for cases upon which final agreement was not possible.

The results of the refugee status determination process in the Philippines was 3,378 persons screened-in and 3,672 persons screened-out at the first instance. UNHCR exercised its mandate in 13 cases involving 19 persons.

5. THAILAND

BACKGROUND: The Royal Thai Government began screening all cases as of 15 June 1989 and ended screening in late 1994. The responsible government body was the Ministry of Interior (MOI). The interviews were assigned to a Task Force of 25 lawyers, recruited specifically by the MOI for this purpose. Based on the lawyers reports, decisions were taken by senior MOI officials. The appeals were considered by more senior officials from the same Ministry.

PROCEDURE: At first instance, after initial arrival formalities, Vietnamese asylum-seekers were transferred to Sikhui Camp where UNHCR workers completed registration procedures. Biographic details were recorded in a computer database.

Thailand did not allow NGO participation in counselling. Thus, pre-screening counselling of the Vietnamese boat people in Thailand was left to UNHCR which provided group counselling on form, procedure and criteria rather than on the substance of each case.

Approximately 25 percent of the entire caseload of Vietnamese asylum-seekers were interviewed by UNHCR at the first instance stage. The interviewed cases were selected on the basis of information obtained during the initial registration and served as a basis upon which results could be cross-checked.

After the MOI completed its interview, a summary would be prepared and shared with UNHCR. Following this, a MOI Screening Committee would be convened to discuss the case. UNHCR attended all such meetings as observer/advisor and at these meetings UNHCR's views on cases were presented. Written decisions were rendered in Thai and all decisions were shared with UNHCR. After reaching and finalizing its decisions, the MOI Screening Committee would then share the information with the MOI camp authorities at Sikhui.

Second instance: Following the announcement of a negative first instance decision, each individual was advised in writing that he or she could submit an appeal letter within 7 days after receipt of the negative first instance decision. Copies of all appeal letters were shared with UNHCR. In preparing submissions for review/appeal, the asylum seekers in Thailand had to rely on other Vietnamese boat people in the camps because NGOs were not allowed to provide this service.

100 percent of appellants were interviewed by UNHCR legal consultants who would, in the context of their interviews, provide advice on how to make appeal submissions. After completion of the appeal interview, each individual case was forwarded for review by a Senior UNHCR Legal Officer. A UNHCR recommendation was then made in respect of each case and this information was shared with the MOI Appeal Board.

The MOI constituted an Appeal Board Working Panel to discuss each case. UNHCR attended 100 percent of the meetings, again as an observer/advisor. UNHCR routinely expressed its views at such meetings. The Appeal Board Working Panel would then make a recommendation to the Appeal Board which decided the cases.

The appeal decision would be notified to the appellant in Sikhui Camp by the MOI camp authorities.

UNHCR's role in Thailand had the following attributes:

- (a) Access to asylum-seekers at the point of registration with an opportunity to gather information before screening and to give advice;
- (b) The opportunity to interview asylum-seekers;

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- (c) Receiving from the MOI a copy of its summary of interview;
- (d) Participation as observer/advisor at the Screening Committee meeting;
- (e) Receiving from the MOI a copy of the screening committee's decision;
- (f) Receiving copies of each appellant's appeal letter from the MOI;
- (g) The opportunity for a UNHCR legal consultant to interview and advise each appellant prior to their appeal being heard;
- (h) Examination of each case by a UNHCR Legal Officer for the purpose of making a recommendation to the MOI Appeal Board; and
- (i) Participation as observer/advisor on the Appeal Board Working Panels.

UNHCR has recognized four individual cases on the basis of UNHCR's mandate, and is still seeking the Thai Government's cooperation on the resettlement of the cases. The Royal Thai Government has agreed not to repatriate these cases pending a mutually acceptable solution.

The results of the screening in Thailand, as of June 1995, were 2,979 cases screened-in and 11,227 screened-out at the first instance. On appeal 229 cases were reversed and 7,546 had their negative decisions reconfirmed.

Annex II

Application of the Refugee Criteria

The CPA provides that: "The criteria will be those recognized in the 1951 Convention relating to the Status of Refugees and its 1967 Protocol, bearing in mind, to the extent appropriate, the 1948 Universal Declaration of Human Rights and other relevant international instruments concerning refugees, and will be applied in a humanitarian spirit taking into account the special situation of the asylum seekers concerned and the need to respect the family unit".

a. Past Persecution

The background and personal history of each asylum-seeker was important in assessing the well-founded nature of the fear of persecution. For example, in the case of soldiers their length of service and ran (or that of their close relatives) in the former South Vietnamese Armed Forces or allied services was relevant to the level or degree of adverse attention or persecution they might face. Likewise, the length of time spent in re-education and/or in a New Economic Zone was relevant in assessing the degree of persecution which could be suffered on return to Viet Nam.

Other significant reference points for assessing claims of persecution were: the period of deprivation of family registration cards ('Ho Khau'), discrimination in the field of education, health services, national military and labor services, confiscation of private property, ethnic discrimination, and control of religious practices.

However, in many cases the instances of persecution or serious discrimination were remote in time. Over the years, after the reunification of Viet Nam in 1975, and particularly since the mid-eighties, Viet Nam has, according to available country of origin information, witnessed a gradual but significant relaxation of the punitive or discriminatory measures which characterized the earlier post-1975 years. Persons who had clearly suffered measures of persecution or serious discrimination earlier in time were later able to resume their lives in a manner not significantly different from ordinary citizens of Viet Nam. Life for such persons indeed remained difficult in view of the poor economic conditions which prevailed in the 1970's and 1980's in Viet Nam, but in many cases these difficulties could not be related to a person's political, religious or social background and were not out of proportion to the economic problems faced by the population as a whole.

b. Future Risk of Persecution

As a guide to what criteria should be applied to persons being screened under the CPA, the CPA specifically cited the UNHCR Handbook on Procedures and Criteria for Determining Refugee Status "as an authoritative and interpretative guide in developing and applying the criteria." [CPA Paragraph 6(c)]. Paragraph 42 of the Handbook reads:

"In general, the applicant's fear should be considered well-founded if he can establish, to a reasonable degree, that his continued stay in his country of origin has become intolerable to him for reasons stated in the definition, or would for the same reasons be intolerable if he returned there." (Emphasis added.)

While in many cases it was not hard to establish or accept that many of the persons concerned had indeed suffered some measures of persecution in the past, it was a different matter altogether when one had to consider whether the same persons would suffer persecution for the same reasons if they were to return to Viet Nam, particularly when such persecution took place, and ended, long before their departure from Viet Nam. The difficulties arose due to the fact that according to country of origin information from a broad range of sources significant changes have taken place in policies and practices of the Vietnamese authorities vis-a-vis the entire population, and particularly those who in the South would earlier have suffered due to having 'bad family backgrounds'.

The CPA criteria adhered to by the first asylum states, in accordance with generally accepted international standards, required the establishment of a reasonable possibility of future persecution and was not based on past persecution alone.

Cases in which Past Persecution is so Serious as to Override the Need for risk of Future Persecution:

Notwithstanding the requirement that to qualify as a refugee a refugee must have a prospective fear of persecution, UNHCR advocated a degree of flexibility, and counselled a more generous approach which was generally accepted throughout the region.

Under this approach, persons who had suffered atrocious forms of persecution over a significant period, however remote in time, were normally recognized as refugees, even though there might not have been a reasonable likelihood that such experiences would recur if they returned to Viet Nam. Thus, persons who suffered from significant periods of incarceration in the past, such as in re-education camps or confinement to New Economic Zones, or persons who have suffered other forms of serious or cumulative measures of persecution, have been recognized as refugees on the ground that such experiences may be said to have left lasting impressions in the mind of the applicant which could be said to significantly impact on the applicant's ability to lead a normal life in Viet Nam. A significant number of Vietnamese boat people have benefited from this approach.

The recognition of refugee status of those asylum-seekers belonging to such categories who had suffered atrocious forms of persecution and who could establish that the scars left by this persecution were such that they could not be expected to resume normal lives in Viet Nam was not problematic.

c. Cumulative Persecution

Another paragraph of the Handbook extensively used in refugee status determination proceedings is paragraph 53 relating to cumulative grounds of persecution. Its relevant section reads as follows.

"In addition, an applicant may have been subjected to various measures not in themselves amounting to persecution (e.g. discrimination in different forms), in some cases combined with other adverse factors (e.g. general atmosphere of insecurity in the country of origin). In such situations, the various elements involved may, if taken together, produce an effect on the mind of the applicant that can reasonably justify a claim to well-founded fear of persecution on 'cumulative grounds'".

Equally important is paragraph 54 of the Handbook relating to measures of discrimination which "lead to consequences of a substantially prejudicial nature for the person concerned, e.g. serious restrictions on his right to earn his livelihood, his right to practise his religion, or his access to normally available educational facilities." Difficulties arose when an applicant could establish that he/she suffered from discriminatory measures but that such discrimination did not amount to persecution, or even if so considered on a cumulative basis, it was too remote in time to warrant the need of international protection.

In fact, the "cumulative grounds" argument of Handbook paragraph 53 and the "atrocious nature of persecution" argument of paragraph 136 and the "consequences of a substantially prejudicial nature" argument of paragraph 54, taken together, were the most frequently used basis for adjudicators in granting refugee status to Vietnamese boat people.

d. Benefit of Doubt Principle

UNHCR's recommendations/decisions have been governed by the humanitarian principles referred to in the CPA and dictated by a generous application of the benefit of the doubt. In some cases, generosity in applying the benefit of the doubt was offset by credibility problems.

d. Problem of Credibility

It is a general principle of law that the burden of proof lies with the person submitting the claim. However, in refugee status determination an applicant may not be able to support his/her statements by documentation or other physical evidence. Verbal statements may not be susceptible of proof. In such cases, the Handbook, in paragraph 196, recommends that "if the applicant's account appears credible, he should, unless there are good reasons to the contrary, be given the benefit of the doubt."

The Handbook, in paragraph 197, also states: "Allowance for such possible lack of evidence does not, however, mean that unsupported statements must necessarily be accepted as true if they are inconsistent with the general account put forward by the applicant."

The question of credibility emerged as a thorny problem for all refugee status determination examiners and adjudicators under the CPA very soon after the commencement of the exercise. As time passed, patterns of similar claims emerged creating doubt in the minds of the examiners, which was difficult to overcome even with the generous application of the benefit of the doubt to the applicant. This was particularly evident in cases where unsupported statements were subsequently made which were grossly inconsistent with the original account put forward by the applicant.

The issue of credibility is sometimes complicated when submissions are forwarded from overseas lawyers, which conflict with claims made by their asylum-seeking client during the refugee status determination proceedings.

e. "Refugee Sur Place"

Application of the "sur place" principle became an issue of concern, particularly in Hong Kong, where political activities and demonstrations against the Vietnamese government gave rise to the invocation of this principle. Under this principle, a person may become a refugee for actions committed or statements made in the country of asylum which may lead to well-founded fear of persecution upon return to country of origin. The in-camp activities by Vietnamese boat people in Hong Kong included publicized agitation against the Vietnamese government, writing to periodicals (especially overseas Vietnamese publications), signing petitions

which denounced the Vietnamese government, lodging judicial review which received wide publicity, misbehaving with Vietnamese delegations interviewing voluntary repatriation candidates, etc. A number of NGOs, private lawyers and others have argued for recognition of refugee status based on the application of this principle. However, both the Hong Kong authorities and UNHCR took the position that the application of the principle did not apply to this caseload.

In taking this position, UNHCR took into account the relevance of the CPA, in particular the Vietnamese Government's implementation of the provisions of the MOU of December 1988, and reiteration of similar assurances by the Vietnamese Government at subsequent international gatherings (in particular the meeting of the Steering Committee IV of the ICIR), including the waiver of prosecution or punitive and discriminatory measures for actions committed in the context of seeking asylum abroad. Subsequently, such assurances were also extended to involuntary returns from Hong Kong and Orderly Return arrangements with Indonesia, Malaysia and the Philippines.

In light of the above, while the possibility of invoking the principles of "sur place" has not been ruled out as an option in exceptional circumstances, UNHCR generally considered that publicity of an asylum seeker, received as a result of his/her activities, in itself did not establish a well-founded fear of persecution in the context of the CPA.

f. Principle of Family Unity

The CPA makes special mention of "the need to respect the family unit" (CPA paragraph 6(a)). Problems were encountered given the broader family concept existing in Vietnamese culture and the position of the resettlement countries which insisted on the application of the narrower nuclear family concept in conformity with their own legal requirements. Some resettlement countries, notably the U.S., were willing to accept non-nuclear family members from Viet Nam under the ODP.

In general, spouses and minor children benefitted from the principle of family unity. The definition of 'minor children', however, varied between 16-21 based on the legislation in the first asylum countries. Dependent parents and sometimes other dependent relatives, where dependency and humanitarian considerations were clear-cut, also benefitted under the principle. This approach took effect in both joining family members settled abroad and in inclusion as part of a family unit for refugee status determination processing.

Common-law relationships entered into prior to departure from Viet Nam were, in principle, recognized by all parties to the CPA. The problems associated with this were primarily practical ones of establishing a sufficient degree of proof.

Given the complexities of proving relationships, UNHCR has undertaken an informal review of family reunion cases in line with basic principles:

- 31 -

- Minors and dependent children are to be reunited with parents (non-dependant adult children will not be reunited)
- Marriages predating the determination of refugee status are to be recognized
- Marriages post-dating the determination of refugee status will be recognized as granting "derivative" refugee status, providing the resettlement country is willing to resettle the person from the country of first asylum.
- Common law relationships will be accepted as existing if there are children (or if obstacles to effecting marriage can be shown)
- Reunification between/among siblings/uncles/cousins will only be allowed if dependence can be clearly established.

Persons in first asylum camps whose family member left under ODP will not be able to benefit from the family unity principle under the CPA, because the ODP persons did not enjoy refugee status and cannot confer "derivative" refugee status on the relative in the camp.

UNITED NATIONS
HIGH COMMISSIONER
FOR REFUGEES



NATIONS UNIES
HAUT COMMISSARIAT
POUR LES REFUGIES

Branch Office for the United States of America

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28 September 1995

The Honorable Christopher Smith
Chair, International Operations and Human Rights Subcommittee
2370 Rayburn
Washington, DC 20515

Dear Mr. Smith:

I am writing to request that you correct some misinformation that was presented at your subcommittee's July 25 hearing on the Comprehensive Plan of Action by Mr. Allen Walter Tran, of Indiana. Mr. Tran testified that one of his brothers, Tran Le Bau, had been forced to return to Vietnam and had been imprisoned, he suggested, because of his activities prior to leaving Vietnam and because of his status as a returnee. This information is incorrect. UNHCR would appreciate it if your hearing record could indicate the facts of this case.

UNHCR's office in Ho Chi Minh city looked into the return of Tran Le Bau, his treatment on return, and the grounds for his subsequent arrest. In the course of this investigation our staff met twice with his sister, Ms. Tran Thi Kim Hang, who lives in the same household.

Mr. Tran Le Bau returned voluntarily from Galang on Feb. 16, 1995 and went to live with his wife (who had not gone to Galang), his 9 year old son, and his sister (who also had not left Vietnam) in Quan Go Vap, Ho Chi Minh City. Mr. Tran is said to have reintegrated normally, and received from the government on March 25 his official household registration.

His sister told us that on May 5, 1995, following a night of drinking, he was trying to settle a drunken brawl, when he was asked by a local policeman to go to the police station. Ms. Tran alleges that her brother resisted arrest and was subjected to physical abuse at the local police station. Tran Le Bau has been held under investigation since that evening at a local detention facility in Go Vap, and his family can visit him once every two weeks. Ms. Tran visited our office on August 16, after having visited and talked with her brother that same day. She made a statement to UNHCR about the incident, and I am enclosing a copy for your information.

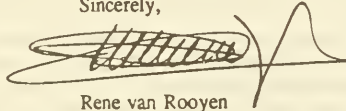
It is unfortunate that the testimony at your hearing led many to believe that somehow Mr. Tran had been singled out for punishment in Vietnam. But Mr. Tran was not arrested because of any activities prior to his departure from Vietnam nor because of his returnee status, but rather because when drunk, he had an altercation with a local policeman and resisted arrest. Such events can occur in any society, and in most societies forcibly resisting arrest is a punishable crime.

Ms. Tran also told our staff that her remaining brother, Tran Cong Ngoc, at Galang "refuses to return as he fears that he would not be able to make a living to support his family in Vietnam" - again, information which is quite different from what your witness, Mr. Allan Tran suggested.

Given the seriousness with which you and your staff have directed your inquiry into the CPA, it would be most inappropriate if the treatment of this returnee in Vietnam continued to be mistakenly ascribed to political motivation instead of to a matter of an individual's disorderly conduct.

Thank you for this opportunity to present the relevant information about Mr. Tran Le Bau's return and status in Vietnam.

Sincerely,

A handwritten signature in dark ink, appearing to read 'Rene van Rooyen', with a stylized flourish extending to the right.

Rene van Rooyen
Representative

(Unofficial translation)

Report

I undersigned Tran Thi Kim Hang, born in 1963, residing at 1/16, Group 2, Ward 15, Go Vap District.

I have the honour to make a statement as follows:

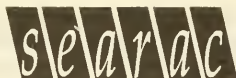
On 5 May 1995, my brother Tran Le Bau went out drinking with some neighbours: Dan, Nghia and Dung. After the party, there was a dispute between Nghia and Dung, and my brother tried to settle their quarrel. At that time, I was not there but I heard the story from my neighbors: when a policeman of Ward 15 approached, the two guys ran away leaving my brother alone. The policeman invited my brother to the police station of Ward, however, my brother said that he was only a mediator who did not do anything wrong, why he had to go to the police station. The policeman decidedly invited my brother to the police station and they haggled with each other. The policeman snatched my brother's collar and dragged him along. My brother persistently refused, the policeman took out the gun and threatened to shoot my brother. My brother got angry and, a little bit drunk, he seized the policeman's hand, aiming the gun at his body and called him: "Shoot me".

When family was informed about that incident, we ran out to see what happened. The policeman did not allow me and his wife to come in. We only stood outside and saw the policeman beating my brother. He forced my brother to sign something that we did not know clearly. It took a long time for them to bargain and finally, my brother signed it. After that, my brother was escorted to Go Vap District. It was over 3 months since then. When we visited my brother at the Detention Center, he told that as it was very dark, he did not know that person was a policeman. He only recognized the policeman when his collar was snatched and he was pushed to the wall. Because he just returned to VN, he did not know anything about the laws and never thought that his reaction was considered as an attack against the policeman on duty.

I declare that my declaration is correct. The whole story is the truth. I expect your consideration.

16-8-1995

Tran Thi Kim Hang



Southeast Asia Resource Action Center

VIETNAMESE ASYLUM-SEEKERS
RESETTLEMENT, REPATRIATION, AND ASSISTANCE

Testimony by

Le Xuan Khoa, President
Southeast Asia Resource Action Center

Before the House Committee on International Relations
Subcommittee on Asia and the Pacific
Subcommittee on International Operations and Human Rights

July 25, 1995

Today, I have both a challenge and an opportunity to address an issue of great concern among refugee advocates. I am referring to the plight of some 40,000 Vietnamese asylum-seekers in Southeast Asian camps who have been denied refugee status and are now resisting a return to their homeland — either voluntary or forced.

It is a challenge to me because there are conflicting opinions, even among refugee advocates, on how to deal with the current situation in first asylum camps, which may burst into tragic incidents of violence.

Is also an opportunity for me, as a former refugee and as a long-time advocate for refugees and human rights, to suggest a solution to this tragic dilemma that is both humanitarian in nature and realistic in terms of resettlement, repatriation, and assistance.

The organization of which I am president, the Southeast Asia Resource Action Center, better known by the acronym SEARAC (once known as the Indochina Resource Action Center) is perhaps the oldest Southeast Asian refugee advocacy group in the United States. It was founded sixteen years ago to help as the numbers of refugees from Southeast Asia swelled during the great migrations of the 1970s and 1980s. We actively serve as an umbrella organization for more than 100 ethnic refugee mutual assistance associations throughout the country. We view ourselves as a voice and a resource for Southeast Asian communities in the United States — primarily Cambodian, Laotian, and Vietnamese.

SEARAC'S mission for the 1990s is to promote community empowerment and leadership development in the U.S. and to participate in the process of economic development, reconstruction, and human rights in Cambodia, Laos, and Vietnam. This new direction is in tune with changes in Southeast Asia in the aftermath of the Cold War, and mirrors the new era of positive relationships between the U.S. and the three countries of Indochina.

As for myself, I have been involved actively on behalf of refugees since I first arrived here after the fall of Saigon in 1975. The plight of my fellow-countrypeople has been my constant overriding concern, and it is this concern that has brought me before different committees and subcommittees of the Congress, and again brings me here today.

How did we arrive at today's dilemma? The background is complex and not always well-understood. It is closely tied with a 1989 international agreement, to which the United States was a party, called the Comprehensive Plan of Action. This Plan sought to resolve, once and for all, the problem of those refugees remaining in camps around the rim of Asia — in Malaysia, Indonesia, Thailand, the Philippines, and particularly Hong Kong.

The plan called for screening by these countries of first asylum to determine who were "true" refugees. For those "screened in," resettlement in third countries was to be permitted. But for those "screened out," return to their homelands — voluntarily or as a last resort forcibly — was envisioned.

Unfortunately, the screening was flawed in a number of cases. Inevitably, there were those who fell through the cracks of the system. This occurred because of a lack of uniformity among the

screening countries, and instances of corruption and bribery, and also because of the physical difficulties of screening so many people. There are documented cases of refugee status being denied by the host countries to such patently obvious refugees as former political prisoners, former U.S. government employees, religious leaders, split families, and some people in compelling humanitarian situations. We call these the "egregious" cases.

The logic of the CPA was that once hope of third country resettlement was removed, those who were "screened out," realizing they could not qualify as refugees, would voluntarily return home. Sadly, to prod people into such decisions, the host countries often reduced services in the camps.

The result was predictable. While some people have returned home, many others have asked for more time to make a decision. And with camp services deteriorating, conditions are ripe for the kind of reports we have all received — violence in the camps, violence by host country authorities against the refugees, violence between refugee groups, and self-violence, mutilation and even suicide. These incidents feed a sense of abandonment and hopelessness among the refugees that rob them of the ability to make reasoned judgements about their future.

Word of the original earmarking of thirty million dollars by the House in H.R. 1561 for re-screening, a well-intended gesture, spread like wildfire through the camps. Decision-making stopped, and everyone waited, exacerbating conditions even further. And while those in camps welcomed what they saw as new hope, the host countries strongly resented and opposed what they viewed as an impending violation by the U.S. of the CPA international agreement. Now, unfortunately, although the thirty million dollar earmark has been removed from the legislation, word of this removal is not understood or accepted in the camps or by many Vietnamese in the United States.

And so the uncertainty has taken on a new life, and has slowed down a resolution to this tragic problem.

Today, I would like to offer what I believe is a fair and realistic approach to this problem.

- I. We must carry out a limited re-screening of a clearly defined body of cases which we see as "egregious." This should include former political prisoners, certain Nung ex-soldiers, former U.S. employees, religious leaders and dissidents, split families, and compelling humanitarian cases. Adequate records now exist to verify the claims of these individuals. This will involve negotiation with the host countries to permit the re-screening.
2. This re-screening must be done, not by the countries of first asylum, but by the countries in which the possibility of resettlement exists. For instance, former U.S. employees would be re-screened by U.S. authorities.
3. Third-country resettlement would be accomplished promptly for the newly-screened-in.

4. Meanwhile, countries of first asylum must restore services that make life bearable in the camps — adequate food, water, shelter, and other services, and halt coercive measures.
5. Once the review of egregious cases is completed and bona fide refugees have been resettled, decisions by those who remain in camp will become obvious — a return home.
6. But return home must be accomplished through a good system of monitoring and re-integration into their communities. Education must be provided for children deprived of schooling in the camps. Vocational training geared to the local economies must be undertaken. Health services, including mental health services, will be especially important for people confined for years in camps.

Before elaborating on these six points, I would also like to recommend that similar steps be taken on behalf of the Laotian refugees in Thailand. In addition, the U.S. Department of State should work with the Royal Thai Government to achieve agreement that all Lao/Hmong now in Thailand who are qualified as refugees and eligible for resettlement in the United States should be permitted to depart for such resettlement. Our country needs to be involved in the existing monitoring and re-integration assistance program, which is currently limited to the capital city and its environs. Especially in the case of the Hmong and other Highlanders (who were our stalwart allies during the Indochina wars), and who would generally be returning to distant, inaccessible provinces, an extra effort of site preparation is required.

Regarding the elements of the proposal outlined above, I would like to comment briefly.

While the re-screening process ideally should be carried out in the first asylum countries (Track I), it is possible that these countries might resist re-opening the process. Therefore, refugee resettlement circles in this country have discussed what we have come to call "Track II." Under Track II, those in camps would be returned to their home countries, where the re-interviews would take place much as the successful Orderly Departure Program has functioned. Those screened in would leave for third countries, and the others would be reintegrated into local society. The Track II concept, which has been developed into a full proposal by my three colleagues Lionel Rosenblatt, Shep Lowman, and Daniel Wolf, will be described clearly by one of the authors as a part of this hearing. Most refugee advocacy groups have agreed that Track II is the most workable approach to close down the Comprehensive Plan of Action and avoid setting off another serious crisis.

I cannot stress strongly enough the importance of monitoring and re-integration services, reinforced by written safeguards and guarantees, for those who return home.

SEARAC is a member of InterAction and has collaborated with many other Non-Government Organizations (NGOs). Together with the other NGOs, we have conferred regularly and worked closely with the Department of State with respect to this problem, in providing information and suggestions. The NGOs, many with long history of work with refugees or in Vietnam itself, are eager to be involved both with the U.S. Government and the United Nations High

Commissioner for Refugees — all of whom have the same goal of fairness and human rights interests.

I do not see it as the role of SEARAC or other NGOs to coerce those in the camps to return home, but rather to provide accurate information to help them reach reasonable decisions. For those who do return home, the NGOs including SEARAC would be willing to carry out appropriate monitoring and the provision of needed services to help these needy people repair their lives.

Another often-voiced concern has been the deficient human rights record of the Vietnamese government. We recognize this concern, particularly regarding the arrests of political dissidents and religious leaders, and view it seriously. However, in the case of people who returned from first asylum countries, numerous international observers — including human rights organizations and journalists who have visited Vietnam to investigate possible human rights violations among repatriated persons — have found no evidence of persecution. Late last year, a delegation representing InterAction's Committee on Migration and Refugee Affairs CPA Task Force visited Vietnam, and reported that "we received no information during our visit that the great majority of returnees had any reason to fear the [Vietnamese] government upon their return." They added "...the delegation believes that the vast majority of asylum-seekers would be better off returning home to Vietnam voluntarily."

As for myself, I have visited Vietnam several times since 1991. I also do not believe there is any systematized discrimination or persecution. It is clear that the Vietnamese government, with the end of the Cold War, has moved from its hard-line Communist stance toward a free market economy. This month, by establishing diplomatic relations with the United States and becoming a member of ASEAN, the process of Vietnam's integration into the community of nations has been accelerated. As a result, there will be more opportunities to promote democracy and improve the human rights record of that country.

In the meantime, there is a crucial need to help those who have returned from first asylum countries. For the past several years, many small groups of young Vietnamese-Americans have set up their own programs, mobilizing their own resources, to provide assistance to both the returnees and non-returnees. None of these groups have identified any case of persecution.

In July 1993, with funding from the Department of State's Bureau for Refugee Programs and with the cooperation of Vietnamese-American volunteers, my organization started a reintegration assistance program to address the needs of repatriated asylum-seekers. These people, who have virtually nothing left for them upon return, need to be assisted in their effort to rebuild their lives. Education for children, employment for adults, and health care for all, especially the elderly, women, and children, are crucial needs to be met. By the end of that pilot project, we had provided some form of assistance to each one among 3,000 people, half of whom are returnees. This year, we expanded our program to five more provinces in the Mekong Delta, serving a target population of 6,500 returnees and 6,500 poor members of the local community. Our field experience has shown that by providing direct assistance to the returnees, the non-

governmental organizations (NGOs) can also monitor their safety in a practical manner. In fact, we believe this de facto monitoring system is in some ways even more effective than the official monitoring system implemented by UNHCR.

We are at the final stage of the Southeast Asian refugee program. As a last humanitarian gesture, we must in good conscience close down this sad chapter of history in a practical and humane manner. The crucial role of NGOs should not be overlooked. Governments and the UNHCR must work in partnership with NGOs to achieve a peaceful repatriation program, to resettle the egregious screened-out cases, and to protect and assist the returnees to reintegrate successfully into their own societies.

Thank you for this opportunity to express my views.

CHARTS SUPPLIED BY THE HON. PHYLLIS E. OAKLEY WITH STATISTICS ON
VIETNAMESE ASYLUM SEEKERS

U.S. Department of State
Bureau of Population, Refugees, and Migration

Screened-Out Vietnamese Asylum Seekers*

Total Population 38,996

Characteristics

Age



Alleged
USG/Military Service/Re-ed

■ No Claim □ Claim

■ Under 30 □ Over 30

*Females in Thailand camp are not included in percentage, but are included in total population



U.S. Department of State
Bureau of Population, Refugees, and Migration

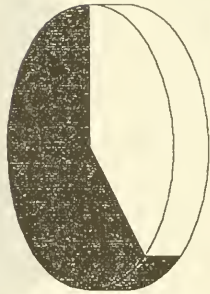
Screened-Out Vietnamese Asylum Seekers

Malaysia

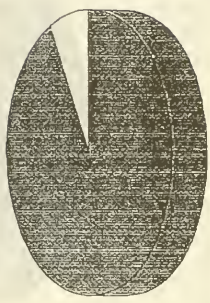
Camp Population 4,681

Age Characteristics

61 3%



92 2%



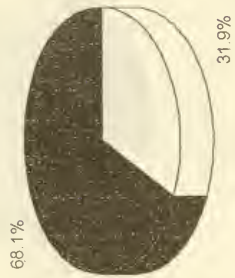
Alleged
USG/Military Service/Re-ed
☒ Under 30 ☐ Over 30 ☐ Claim ☐ No Claim



U.S. Department of State
Bureau of Population, Refugees, and Migration

Screened-Out Vietnamese Asylum Seekers
Philippines
Camp Population 2,972

Age



Characteristics



Alleged
USG/Military Service/Re-ed
☒ Under 30 ☐ 30-60 ☐ Over 60
☐ Claim ☒ No Claim



U.S. Department of State
Bureau of Population, Refugees, and Migration

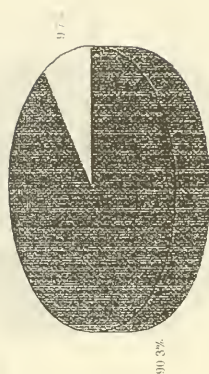
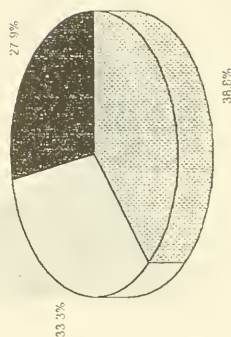
Screened-Out Vietnamese Asylum Seekers

Thailand

Camp Population: 5,097

Age

Characteristics



Alleged
USG/Military Service/Re-ed
Claim No Claim

Males over 30 Males under 30 Females

PHM/AAA
7/85

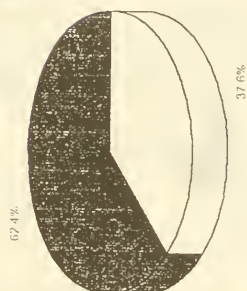
U.S. Department of State
Bureau of Population, Refugees, and Migration

Screened-Out Vietnamese Asylum Seekers

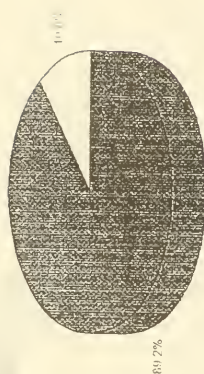
Indonesia

Camp Population 4,840

Age



Characteristics



Alleged
USG/Military Service/Re-ed
☒ Under 30 ☐ Over 30 ☐ Claim ☒ No Claim

PRM/AAA
7/95



U.S. Department of State
Bureau of Population, Refugees, and Migration

Screened-Out Vietnamese Asylum Seekers

Hong Kong

Camp Population 21,406



Age



Home Region
in Vietnam

Characteristics



Alleged
USG/Military Service/Re-ed

☒ Under 30
 ☐ Over 30
 ☒ north
 ☒ south
 ☐ central
 ☐ Claim
 ☒ No Claim

PRM/IAAA
7/95

CUMULATIVE INDOCHINESE ADMISSIONS TO THE U.S.
1975 - JUNE 1995

In 1975

Vietnamese	123,000
Other	<u>12,000</u>
SUBTOTAL 1975	135,000

From First-Asylum
Countries after 1975

Vietnamese	424,213	*	
Khmer	150,235	*	
Lao (Lowlanders)	121,565	*	
Lao (Highlanders)	<u>125,886</u>	*	
SUBTOTAL First Asylum	821,899		821,899

From ODP

Vietnamese Refugees	268,203	
(includes Amerasians)		
Immigrant Visas/Parole	<u>148,872</u>	
SUBTOTAL ODP	417,075	417,075

<u>TOTAL INDOCHINESE SINCE 1975</u>	<u>1,373,974</u>
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VIETNAMESE ONLY SINCE 1975

1975	123,000
First Asylum	
Pre-CPA	394,575
Under CPA	29,638
(Pre-cut-off	16,955)
(Post cut-off	<u>12,683</u>)
	424,213
ODP-Refugees/Amerasians	<u>268,203</u>
SUBTOTAL REFUGEES	815,416

SUBTOTAL IV/PAROLE	<u>148,872</u>
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<u>TOTAL VIETNAMESE ADMITTED</u>	<u>964,288</u>
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ADMISSIONS OF VIETNAMESE BY ALL OTHER COUNTRIES

From First Asylum Countries	329,309
From Orderly Departure Programs	<u>156,926</u>
<u>TOTAL</u>	<u>486,235</u>

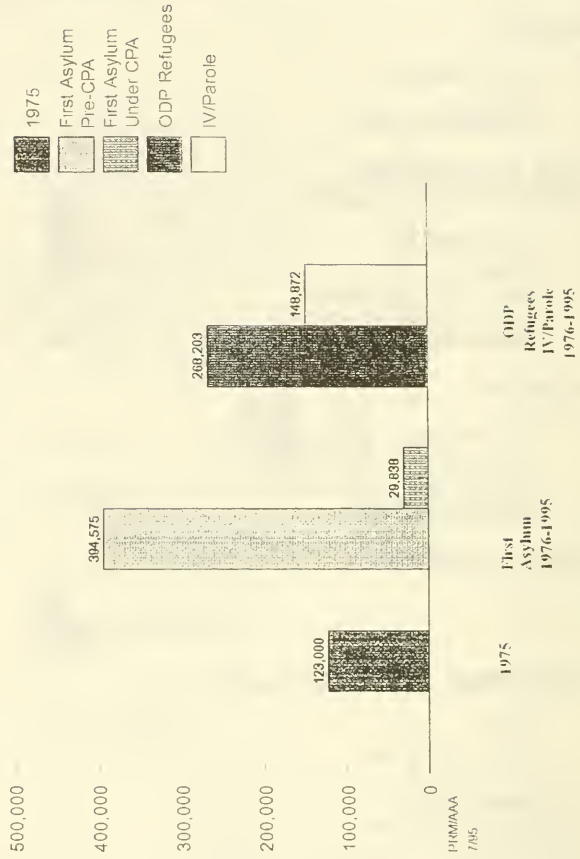
* UNHCR figure as of April 1995



U.S. Department of State
Bureau of Population, Refugees, and Migration

Vietnamese Admissions to U.S. Since 1975

Total: 964,288



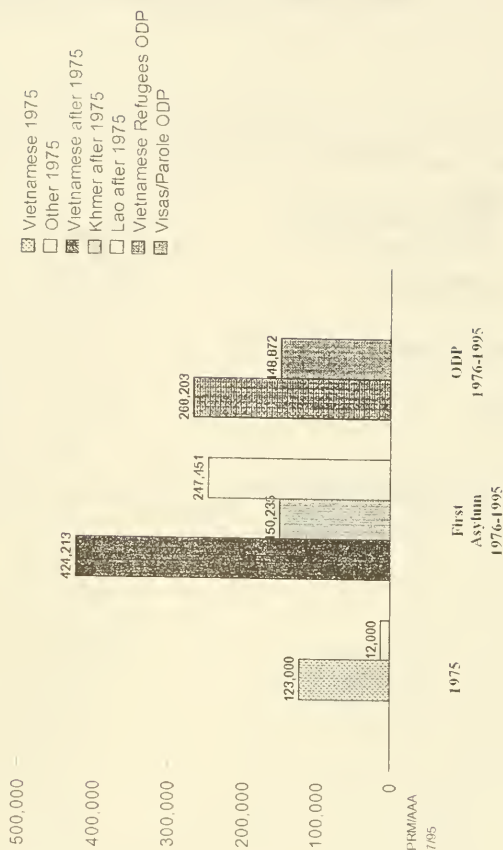


U.S. Department of State
Bureau of Population, Refugees, and Migration

Indochinese Admissions to the U.S.

1975 - June 1995

Total: 1,373,974





INDOCHINESE REFUGEE ACTIVITY
Resettlement of Vietnamese in Third Countries

From First Asylum Countries since April 1975 329,309*
(excluding the ODP)

CPA

Pre-Cutoff Date	34,318
Post-Cutoff Date	19,437

<u>SUBTOTAL</u>	<u>53,755</u>
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Orderly Departure Program	156,926
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TOTAL	486,235
=====	=====

The principle resettlement countries after the United States
are Australia, Canada, and France.

* This does not include the 260,000 Vietnamese who were granted
first asylum in China.

U.S. Department of State
Bureau of Population, Refugees, and Migration

Admissions of Vietnamese By All Other Countries
1975-1995

From First Asylum Countries	329,309
From Orderly Departure Programs	<u>156,926</u>
TOTAL	486,285

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